The Victims' Commissioner for England and Wales

Response to "Delivering justice for victims: A consultation on improving victims' experiences of the Criminal Justice System"

February 2022

A note on terminology

We acknowledge some victims dislike the negative connotations occasionally associated with the term ‘victim’. Some victims and many non-statutory agencies prefer to use the word ‘survivor’. Lawyers often prefer to use the term ‘complainant’ when referring to victims before and during a trial. We respect their views.

For the purposes of this consultation, however, we have used the term ‘victim’ because it’s the term that most agencies use and understand when referring to someone who has experienced victimisation.

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Chapter 1 – Meeting victims' expectations

Question 1: Do you agree that the key principles set out in the consultation are the right ones? If not, do you have any other suggestions?

Preamble

It is important to make a number of key points prior to responding to this consultation. We recognise that this is a consultation that is largely concerned with the treatment of victims whilst they engage with the criminal justice system (CJS). This is crucial and much-needed work. However, it is important to note that the vast majority of victims of crime, particularly of high harm crimes, do not engage with the CJS.

Chapter Three is the only chapter that most closely considers the needs of victims who do not enter the CJS. We, therefore, highlight that chapter Three is of the most importance for the wellbeing of the widest proportion of victims.

There will be a range of reasons why some victims of crime do not engage with the CJS. It is of crucial importance to understand what these are in order to overcome them. **We recommend that the Ministry of Justice commissions in-depth research that explores and ascertains those reasons**. We specifically note that black and minoritised women and disabled women, including learning disabled women, appear to be the least likely victim cohorts to engaged with the CJS. This is in contrast to reports from the Crime Survey of England and Wales (CSEW) and other feedback which suggests these two groups are more likely to be victims of crime. **We are also concerned about whether older or younger people and people of particular faiths are over-represented in victimisation and under-represented in engagement with the criminal justice system. We therefore request that the research explores the detailed characteristics of who does and does not engage with the CJS, why this is the case and how the CJS could be improved to remove barriers and meet the needs of all victims.**

We support the key principles set out in the consultation.

However, we note that the current rights are unknown by the vast majority of victims and that compliance with the Victims' Code is the exception not the rule. As such, the principles are meaningless unless the concept of a victim is transformed into that of a participant in the process, rather than a bystander.

Victims' rights are treated almost as if they are favours to be given, if possible, or explained away if not. This is not working and is not good enough.

A Victims Law is an opportunity to put these rights as clear statements and on a proper statutory footing, requiring compliance at all times

The victim as participant

We applaud the government's aims set out on Page 11 of the consultation document:-

'We want to empower victims… want them to know the importance of their role in bringing offenders to justice…. want them to be kept informed at key points throughout the case … for their voices to be heard and embedded in the criminal justice system'(pg. 11)

Those are our aims, too, and we will work with government in any way we can to achieve them.

We agree with the government proposal to put the guiding principles into legislation and we think that the four principles set out in the document are a good start:

1. Ensuring victims are informed so they can fully understand the criminal justice process
2. Ensuring that they are supported including being assessed for eligibility for any specialised assistance such as special measures
3. Ensuring they have their voices heard in the criminal justice system and be offered the opportunity to make a Victim Personal Statement to explain how the crime has impacted on them and
4. The Victims' Right to Review, that is to challenge decisions that directly impact them in particular decisions not to pursue or to stop a prosecution

However, the current Code does not match those principles. We describe how it will need strengthening in order to do so and in order to embrace the ambition in the document to upgrade the victim's rights to be informed and to have a voice with the police, CPS and other agencies. Furthermore, the principles are themselves partial and expressed in a very high-level way which will not drive the culture change necessary. We offer further suggestions we see as imperative to go into the legislation if victims' expectations are to be met, as the government intends.

We emphasise that a profound cultural change will be needed from the criminal justice agencies to achieve these expectations and the government's aims. We set out more fully below, what our experience suggests is a key reason why a pro-victim culture has never emerged in the criminal justice system and we describe how space for victims' interests can be found by the criminal justice agencies, even within a system which is adversarial between the state and the defendant. We recommend that victims are deemed to be participants in the criminal justice process, in order to encourage the view that they are central to it and not peripheral which is the 'cultural shift' the government seeks (see pg. 1 of the consultation document).

Implementation of the Victims' Code has been weak. The police and CPS, who see their role in a contest over guilt/innocence with the defendant, historically saw victims as peripheral. Victim care has only evolved as a concept in the past few decades and, although government introduced a Code of Victims' Rights as long ago as 2006, compliance with it has never been made compulsory. This has left intact some of the legacy culture that victims are peripheral/not the agencies' responsibility, which otherwise should have evolved away by now. It has also left agencies feeling free to disregard the Victims' Code at will - or at least to de-prioritise it. These are entrenched cultural barriers and their effect can be exemplified by simply noting that in 2019/20 only 23% of the tens of thousands of victims who enter the criminal justice system annually have ever heard of the Victims' Code, a figure that has hardly changed year on year since the original legislation.

The government accepted in its 2018 Victims' Strategy that, in contrast to its aims set out above, what frequently happens is that victims become 'a victim of the process as well as the crime' (see page7). And, despite almost 20 years of successive Victims' Codes, this consultation document is easily able to quote statistics showing how few victims receive even basic Code rights. A government which wants: 'A cultural shift so that victims are central to the way our society thinks about and responds to crime' (see page 6) cannot any longer tolerate a position where the vast majority of victims do not get their rights and are left without the help they need to cope with crimes it has failed to protect them from in the first place.

The peripheral treatment of victims in the criminal justice context and the culture of disregard of their rights contrasts with the broadly sympathetic attitude that society has to victims of crime. We suggest that this sympathy deficit is largely attributable to the thrust of the criminal

justice system being not to right victims' wrongs but to try alleged wrongdoers. According to this philosophy, society as a whole is the victim of crime and even if called as a witness, an actual victim is not there to talk about what happened to them but to tell the court what the defendant did, as if they are a bystander to a crime against themselves. The academic Paul Rock calls victims 'fodder for the criminal justice system' (Rock, P., 1991. *Helping victims of crime*. Oxford: Clarendon Press.)

Even though, on a human level, criminal justice professionals can appreciate that victims of crime suffer serious harm and many will, when possible, try to take a role in meeting their needs, their function is in the adversarial process between the defendant and the state. It is also the case that while for some professionals victims' care and their rights simply have to take a back seat behind their core work, others see it as wholly the role of support services outside the criminal justice system. We set out some examples of recent justice agency failings in delivery below as evidence of the continued prevalence of this perspective.

The Victorian Law Reform Commission of Australia expresses well the better perception we would recommend as an aid to stimulating a more victim-sensitive criminal justice culture. They observe that victims, whilst never a party in the adversarial system between the state and the defendant, are nonetheless:

'intimately involved from the moment of the offence right through all processes and beyond them into their future lives'.

They are not only hurt by 'their' crime but inextricably locked by it into the criminal justice process, as involuntary participants. In Victoria, they have determined that victims should be seen as 'participants' (but not parties) in the justice system and we think that is a helpful way to describe the role that victims find themselves and that it throws light on why adherence to the Code is vital in every case. How the criminal justice system treats participant victims will strongly influence their recovery. Being victimised is demeaning, and decent treatment and respect given by the criminal justice agencies, representing all of us in society, has important restorative benefits and can be powerfully symbolic.

When the criminal justice is engaged it is *the* key lever for restoring victims. Support services start victims on the road to recovery only to see them regress if the justice system treats them poorly, due to its public and representative nature and the high respect in which it is held. This means that good treatment by the criminal justice agencies is uniquely important for victims and cannot be delegated elsewhere. Further, recognition of victims' interests is not at variance with a justice professional's role in serving the public and has no impact on the adversarial process. We think that seeing a victim as participant in the criminal justice process is a helpful concept for understanding *why* they have entitlement to rights in a system where the main protagonists are the state and the defendant. As such, we suggest that it can play some part in changing the culture to bring them to the centre of the system, as the government intends.

In order to underpin the four principles to be put into legislation, it should be enacted, following the model in Victoria, Australia that a victim is a participant in the criminal justice process and that the entitlements under the Law and Code follow from that status in all cases. Observing those entitlements will deliver justice to them, even as the adversarial process is delivering justice to the defendant.

Below, we set out some recent examples of how the Code rights have been disregarded in order to set out the scale of the change which will be required.

A. In the year to March 2019, whilst most victims were satisfied with their *initial* contact with police (73%), over a third (35%) speedily grew dissatisfied with the way the police handled their case, complaining that they were aware of little or no action being taken and there was no communication.
B. In February 2020, The All Party Parliamentary Group on Adult Survivors of Adult Sexual Abuse found persistent communications failures:
'Time and again survivors and supporting organisations described irregular and poor-quality communication from police after the moment of first disclosure. Many waited months to hear from police how their case was progressing.'
C. Victims' Commissioner research staff analyse the victims' module of the CSEW annually in February. In the year to end March 2020, more than half of victims said the police did not keep them informed about progress in the case, a significant drop in satisfaction over the past five years. (See Table 3.)
D. In a Victim's Experience survey carried out online by the Victims' Commissioner, in June and published in September 2021, only a quarter of respondents agreed that they were kept regularly informed or received all the information they needed about the police investigation.
E. HMICFRS/HMCPSI found in a rape inspection in 2021, that though ISVAs stressed how important it is that decisions to take no further action are communicated sensitively to victims, such communication was inconsistent (see page 57). In a quarter of such cases, some when cases were dropped because of early legal advice by the CPS but still to be communicated by the police, there was no record of the victim being told. (See pages 57-58).
F. The CPS must notify a victim by letter if they decide to take no further action. The same HMICFRS/HMCPSI rape inspection found that only a third of such letters were of a high standard, the rest lacked empathy or clarity' (see page 59).This follows a report from HMCPSI in 2018 which found the same faults, and made strong recommendations only to return to the issue in 2020 reporting that 'two years on the CPS is still sending poor quality letters to victims of crime'. They rated less than one in four letters (24.1%) as being of a satisfactory standard. Those in rape cases 'were worse' as were domestic abuse letters. Further, the inspectors found, in line with their 2018 findings, that 'often the explanation of the CPS's decision did not sufficiently cover the circumstances and included legal terms that were sometimes difficult to understand.' They were critical that: 'Not all prosecutors take personal responsibility for their involvement in the provision of information to allow the CPS to send effective letters to victims'. That was described as 'a lack of compliance' (see HMCPSI press notice).

Victims must have rights not favours

While we welcomed the new Victims' Code of Practice last April, we repeatedly commented during its development that not only are the entitlements not rights, since they are not enforceable, but neither are they expressed as rights. For example, Right 6 provides that where police/CPS are considering an out of court disposal there is the 'right' to be asked your views and have them taken into account. The 'Right' continues:
'Where this is not possible the police/CPS will tell you why.' **In other words, the victim's only 'right' is to be told why they can't have their 'right'.**

A similar example is in Right 8 (5) 'When attending court and where possible you will be able to enter through a different entrance to the defendant and wait in a separate waiting area…Some court buildings do not have separate entrances *for victims*, however where informed HMCTS will make arrangements to make sure you don't have to see the defendant on arrival'.

Our Special Measures report showed that victims can be terrified of meeting the defendant and it can deter them from testifying. That is likely to be especially the case where the victim has been traumatised by the offence. A guaranteed right to enter and wait - strictly

separately - is an imperative basic protection and a route, even if not one *'for victims'* has to be made available. In many courts, the judges' entrance is used with appropriate safeguards but elsewhere, incomprehensively, this was not permitted and we have heard of victims, including a couple whose child had been killed in a road crash, being forced to mix with the defendant. The purpose of the Victims' Code is to put make the victim central and if that is to be a reality, it is imperative that the final Code is written as a Code of Rights and not as a list of things it is nice to have if the justice authorities can manage it. Our concern was echoed very strongly by many stakeholders during our stakeholder engagement exercises.

A Victims' Law is an opportunity to put these rights as clear statements and on a proper statutory footing, requiring compliance at all times. This means they are not delivered under the discretion of the agency concerned, where convenience or resource allows, but are adhered to with the same vigilance that is correctly applied to the rights of the defendant. Furthermore, when agencies revise policies and operational practices that may impact upon victims, they must be required to demonstrate that there is no conflict with victim rights. **In other words, victims' rights need to be deeply ingrained into the culture of the criminal justice system.**

The Victims' Code should be revised and rewritten so that it clearly states that it is setting out guaranteed core statutory rights, with a statutory duty on those agencies listed in the Victims' Code to ensure all their policies and practice are compliant and the Rights are delivered in every case without exception.

A right to independent advocates

For vulnerable victims and victims of serious violent or sexual assault or those who are bereaved, the criminal justice system is too challenging, complex and intimidating to be managed by them alone. To participate effectively at the centre of the process, as the government intends, they need an informed and empathetic professional supporter who can, inter alia, act as liaison between the victim and the agencies to the benefit of both. Our report of February 2019 'A Rapid Evidence Assessment of Victim Advocates' found that advocacy interventions may be a benefit to victims' mental health, led them to perceive an improvement in their safety and, in particular, were highly effective in decreasing the fear for ethnic minority women. There is well-researched evidence of better support for the criminal justice process and improved court attendance engendered through the greater victim confidence which comes from advocate support. The government's Victims' Strategy committed to exploring the case for one-to-one support from independent victim advocates. The development of the role of Advisors such as IDVAs, ISVAs, CHISVAs, etc has proven to be very positive, but it has been piecemeal and often targeted on victims of specific crime types. It is arguably not compatible with equality and diversity requirements that some kinds of traumatised victims have access to support from expert advisors and some with similar needs do not. This should now be more fully developed so that there is comprehensive provision.

All vulnerable victims and those who are victims of serious violent and sexual crime should have an express statutory right to a professional and trauma-informed one-to-one advocate/advisor throughout their criminal justice journey to enable them to realise their Victims' Code rights, to have a voice, and to be better able to occupy the central role in the criminal justice system that the government intends.

Independent legal advice

In some cases, despite the stance in the adversarial system that that the prosecution is brought on behalf of everyone in society, the individual victim's legal interests may differ from those of the state. This is particularly likely where the victim's rights under the European Convention on Human Rights (ECHR) are at stake and, to date, has occurred

most frequently in connection with the victim's right to private and family life under Article 8. There is a negative obligation on the public authorities to abstain from arbitrary interference with those rights and regard must be had to the fair balance which must be struck between any competing interests of the individual and the state (see Roche v United Kingdom). This 'triangulation of interests' was recognised by the House of Lords (see R v A 2001 UKHL 25 per Lord Steyn). Clearly, the victim's rights cannot be represented by the Crown Prosecution Service. A participant victim will require independent legal advice, to safeguard their entitlements.

The Information Commissioner, HMCPSI and the CPS themselves have reported that the CPS and police have frequently been over-intrusive in their requirements for rape complainants' confidential material (see page 1 of Victims' Commissioner PCSC Bill Briefing).The government has recently legislated to provide a sounder framework for requesting download of personal data from a victim's phone and intends to consider similar provision to limit the search of material such as school and medical records, which are confidential to a victim but in the hands of third parties. Seeking so called third-party material is now so entrenched a practice that despite the ISVA Code of Practice containing strict boundaries for ISVAs around their relationships with clients (see page 10) including the rule that they must not discuss on-going criminal cases, ISVAs' are frequently asked for their notes. For this consultation, the Survivors Trust interviewed 72 ISVAs of whom 60% had been asked to disclose notes as part of an investigation. This is quite wrong unless police are asserting a reasonable suspicion that ISVAs are randomly breaking their code of conduct and further that their notes, which should not contain any notes of events, in fact show a version of events different from the complaint. This is yet more evidence of an urgent need for legislative control properly regulating requests for third-party material.

These are not the only areas where the state is unable to represent the legal rights of the victim. For instance, Section 41 of the Youth Justice and Criminal Evidence Act 1999 when a defendant applies to call evidence about the victim's previous sexual history will also trigger Article 8 rights. Victims are often not told about such applications (even though important facts may be known to the victim). CPS are reported to take stances out of court, on the basis of whether similar applications have been allowed in the past, whereas the personal interest, reputation and well-being of the individual victim requires them to be fully informed with an independent presence, in respect of Article 8 at the application. Further, the CPS Victims Right to Review (VRR) has been broadened by the High Court to offer an opportunity for a victim to make representations on why their case should be re-considered. CPS have been dismissive of victims' requests to review a refusal to charge, as our survey of rape survivors shows. A victim who wishes to use the voice that the Court has now given to them will require publicly funded representation to protect their interests and argue their rights. In 2005, the government announced its intention to introduce legally-aided representation for victims in homicide, rape and domestic violence cases and, in March 2014, a different government did so in a respect of victims in sexual offence cases. This should be non-means tested merits-based representation.

The Sexual Violence Complainants' Advocate [SVCA] scheme was piloted in Northumbria to engage local solicitors to support rape complainants. The scheme took 83 referrals from September 2018 to December 2019. Casefile analysis showed poor practice around victims' privacy rights. Advocates challenged data requests in 47% of cases. The scheme increased complainants' confidence and understanding in the justice system and improved their ability to cope with mental health impact of system (which is likely to reduce attrition). The project changed organisational cultures, significantly decreasing police and CPS requests for indiscriminate evidence gathering. Police and CPS felt investigations were more efficient and proportionate. A judge commended the pilot scheme. It also encouraged best practice when complainants had complex needs, e.g. special measures / ABE interview. All pilot

participants agreed with principle of legal support being made available for sexual offence complainants.

There should be a statutory right for victims to be given free legal representation in respect of any decisions taken by police, prosecutors or courts that threaten their Article 8 Right to Privacy or any other right within the European Convention and specifically in order to ensure the victim's voice in the VRR.

A statutory right to protection for sexual assault victims' confidential pre-trial therapy and counselling notes

Victims of sexual assault are likely to be traumatised, and in many cases can benefit from early counselling and therapy. Their future well-being may depend on this help as may their willingness and confidence to give evidence in any trial. However, many sexual assault victims hesitate to take therapy because of concerns that notes by their counsellor will be demanded by the police/prosecution and may be sent to the defendant. Clearly, the last person someone who has been raped wants to know how it affected them is the man they say raped them. However, few want the police and CPS to access their notes either, since those agencies are thought to investigate the credibility of the victim rather than the behaviour of the defendant (see Operation Soteria) and so are seen as hostile to the victim. Unjustifiable demands for therapeutic records are made much of the time and cases are frequently dropped if victims do not sign over that intimate information (see Victims' Commissioner PCSC Briefing on third-party material). This happens despite a current legal precedent that such notes should not be sought unless to do so is part of a reasonable line of inquiry and there is suspicion that something in them that will undermine the prosecution or assist the defence (see Alibhai & Ors, R v [2004] EWCA Crim 681)

The practice means that victims of rape and sexual assault are being forced to choose between justice and their right to the help they need. Many may feel that their recovery is more important but that leaves them without a resolution and the public with the risk of a criminal free to offend again. This is particularly a danger in sexual offending as research suggests that most rapists are serial offenders.

On the rare occasion that an allegation ends up at trial, victims can be ambushed with this highly intimate information in cross-examination, though they are notes made by another and the subject has no right to sight of them to comment on their accuracy. Counselling is therapeutic and not investigative, and notes are made about feelings and not facts.

We have set out argument in this response for legislation to curb over-intrusive demands for other personal material, but the intrusion and the risks are so serious with therapy notes that we recommend a shield of privilege around them. That would save sexual assault victims from the further harm they may be caused if their records are revealed. It would safeguard the broader public interest in the integrity of counselling and would promote willingness to report sexual assault. The law would strike middle ground. There would be absolute privilege over notes until a case got within the remit of a court when a party (defence, prosecution or police) would have to seek judicial consent for a summons to access what would then be confidences protected by qualified privilege. The Judge should override the victim's confidentiality only for compelling reasons, taking into account whether the information has substantial probative value not available elsewhere and only if sure that the public interest in preserving confidentiality is substantially outweighed by the public interest in admitting material into evidence. We recommend this approach which will achieve the government's

intention to give victims voice in decisions which will otherwise be taken without their input and often against their interests.

There is a model scheme which has been in force in New South Wales since 1997 and is now law in all the Australian states but Queensland. The Australian adversarial system is near-identical to the system in England and Wales. It is the law there that a victim of sexual assault can consent to the release of protected confidences (can 'waive privilege') but only in writing and with independent legal advice and we would recommend this same additional protection in England and Wales to avoid any risk of the process being sidestepped. We commend this as a well-tried model which by requiring an appropriate balance of interests has safeguarded both victim privacy and defendant fair trial rights and has had a chilling effect on demands for this confidential material.

We recommend that there should be statutory system of protective privilege for the confidentiality of sexual assault victims' therapy records in any criminal proceedings.

Anti-social behaviour – giving victims rights

We published a report, jointly with leading academics and the charity sector, on anti-social behaviour (ASB) in April 2019 – 'Living a Nightmare'

The Anti-Social Behaviour Act 2014 (the 2014 Act) set up a trigger of three reported incidents of ASB over a six month period at which point the victim can seek a community resolution meeting of the responsible agencies, to resolve what is by then persistent ASB. The Home Office guidance supporting this legislation acknowledges 'the debilitating impact that persistent or repeated anti-social behaviour can have on its victims, and the cumulative impact if that behaviour persists over a period of time'. It also explains 'the "Community Trigger", is an important statutory safety net for victims of anti-social behaviour' and that it helps to ensure 'that victims' voices are heard.'

Yet many of these victims are not recognised as victims of crime under the Victims' Code, a point raised by stakeholders responsible for supporting victims of ASB. This means they have no statutory entitlement to access victim support services. Some Police and Crime Commissioners offer support from discretionary spend since they cannot do so from Ministry of Justice victims funds, but some PCCs do not. This means that whether support services are provided for victims of ASB is dependent on where they live, with the concern that some victims suffering significant distress from persistent ASB do not get the emotional and practical support they need to be able to cope and recover. This is likely to have impacts which are inconsistent with diversity and equality requirements, is unfair and is denying support to a cohort likely to be vulnerable following persistent ASB often targeted at them in their home.

All ASB victims who meet the threshold for a Community Trigger should be recognised as victims of crime and be entitled to the rights to be set out under the revised Victims' Code and in the new law

Access to restorative justice

The Victims' Code includes an entitlement to all victims to be informed about restorative justice. Many victims have no recollection of an offer being made. The Victims' Commissioner's statistical bulletin on Crime Survey for England and Wales Victimisation Data found that the percentage of victims who were offered restorative justice decreased from 8% in 2017-18 to 5% in 2018-19. Of those victims who were not offered a restorative justice meeting, the percentage who would have accepted such an offer was 26% in 2018-19. This has remained stable over the past five years. This suggests there is a demand for restorative justice on the part of victims, but they are not being informed. Victims who are

participants in the criminal justice system ought to be reasonably able to expect to be informed of their entitlements so that they can make their own decision whether to pursue options such as restorative justice. We are proposing the offer of restorative justice becomes a statutory entitlement. We understand the cost of such a proposal was calculated at £30m p.a. by the Criminal Justice Alliance (2017).

We recommend that the Right be reframed so that victims are told not only about RJ but how to access a restorative justice service so that they are sure to get a well-informed a professional explanation to enable them to make an informed choice

Capturing the rights of victims of those murdered abroad

The bereaved families of those murdered abroad face specific barriers to accessing justice. Our report, Struggling for Justice, makes a number of recommendations that recognise, and seek to overcome, the specific challenges that these families face. Whilst the Victims' Code does not cover the rights of victims, as their cases will be captured by criminal justice systems elsewhere, it is crucial that the spirit and reality of these rights are delivered insofar as is possible. Bereaved families benefit from the rights such as being provided with clear information and being referred to support services. The relevant agencies, such as the Foreign, Commonwealth and Development Office and police must work in partnership to deliver the rights within the Code when it is possible to do so.

Bereaved families of those murdered abroad must receive the rights captured within the Code insofar as it is possible for agencies within England and Wales to deliver them.

Achieving culture change

We would add, before leaving question 1, that without a fundamental culture change our view is that the criminal justice agencies will, by default, interpret the four principles in a minimal way given the background and history. We accept that most people in the criminal justice agencies may be sympathetic individuals, but the culture is well established. We do not know what powers of penalty/redress the government intends for Code breaches in the future and, though we have worked up an implementation system in support of chapter Two, we struggle to think what realistically can be done via those routes. Even with the addition of our proposals, which are drawn more tightly, there is a need for far more tailored commitment before victims of traumatising offences have their complex needs fully met.

Unless the government compels serious commitment to these basic victims' rights, there is little prospect of more sensitive cases and victims having the additional support mechanisms they need to cope and recover.

It would be an immensely valuable exercise to ask the leaders of all the criminal justice agencies to make a public declaration to champion the Victims' Code.

Question 2: What more can government and agencies listed in the Code do to ensure that frontline professionals are aware of what is required of them under the Code?

Government action: statutory duties

The intention is that the Code is made statutory with a legislative obligation for the listed agencies to comply with its provisions. They will all be deemed to have notice of those duties, which no doubt government will reinforce.

We strongly recommend that, together with a statutory duty on all the responsible agencies to deliver the Code rights, they should be given a statutory duty of informing victims of their Code rights, including the rights to have advocacy and legal advice and a duty of working with victims support organisations and with victims' advocates to ensure those rights are achieved.

In a mirror-image of this we propose a statutory duty on the PCCs' Victims Hubs and in particular but not exclusively on IDVAs, ISVAs and other advocates (as referred to in answer Question 1 above) to inform themselves of the Code rights, to ensure that they are communicated to all victims and to advocate for them with all the agencies named in the Code.

Government action: The Victims' Champion

We propose that there should be a duty on each PCC where they are required to appoint an Independent Victims Champion to promote and drive victims' rights locally, to drive the collection of data on the local operation of the Code, and to be the place of first resort to receive and investigate complaints about local breaches of the Code. (We argue in chapter Two that a Code-specific victims complaints system should be created since many Code breaches do not fit into the police/CPS or HMCTS complaints systems.)

Most importantly, the local Victims' Champion should attempt to troubleshoot any glitches in Code delivery quickly so that they do not impact on the victim's contribution to the case. We think that this is the right way to approach enforcement of Victims' Rights, as we set out in more detail in our response to Chapter Two. We do not think that it is enough solely to offer an after-the-event complaints system. Only where troubleshooting by the Champion has not secured the victim's Code rights should the Champion seek redress for the victim as a solution.

Overall, our sense is that, albeit establishing these duties is vital and an important opportunity to increase awareness, many frontline staff in the criminal justice agencies are already aware of the Code. The urgency is to tell them why they must implement it and oblige them to do so. We have set out, in answer to Question 1 how we think that characterising a victim as a participant in the case can be a helpful concept for this purpose. But we are sure that the cultural change required from the agencies will need a system of scrutiny, accountability and an accessible complaints mechanism which we discuss in our response to chapter Two.

Agency action: complying with the duty

Agencies must ensure compliance with the law and be placed under a statutory duty to promote the use of the Code and champion its delivery together with victims' services and victims' advocates. They should ensure the Code is part of induction, refresher and promotional training and initiate a one-off immediate training module for all staff as soon as the Act comes into force. Each agency should collect data on the use of the Code, with dip sampling and victim satisfaction surveys.

Question 3: What more can government and agencies listed in the Code do to ensure every victim is made aware of the Code and the service they should expect to receive under it?

Government

On Royal Assent, urgently issue easy-read, BSL and other accessible versions and foreign language editions. We think that many victims' organisations may not be fully aware of the Code or, if they are, have not used it as a tool for victims, due to its historic lack of regard from the listed agencies. Victims' organisations, whether nationally or locally commissioned, should be given a statutory duty to promote the rights and are likely to become an important conduit for making victims aware of them and for helping to champion them. Compulsory training on Code rights and compulsory collection of data on Code performance, particularly in order to guarantee the Public Sector Equality Duty should be a condition put onto all victims' services contracts, whether they are commissioned locally or nationally.

Despite Right 4, only 13% of victims in our latest survey of CSEW victims data were referred to victims' support services so many need to learn of the Code elsewhere (not least for their right to know of their entitlement to victims support services) Police must prominently display the Code and CABs, libraries and other information points be encouraged to do so.

Question 4: Do the current procedures around timing and method of communication between the police / CPS and victims about key decisions work for victims? Are there any changes that could be beneficial?

Communicating decisions to victims well is vital. But we stress that there is widespread dissatisfaction about failure to deliver Code communications at all, as we set out in the examples of recent failures to do so in our answer to Question 1. There is an urgent need for all agencies to understand that informing and updating victims plays a vital role in their recovery.

Receiving a decision about the future of their case is a particularly sensitive experience. If the decision is negative, it can re-victimise the individual and trigger shock and trauma especially for victims in the 'enhanced rights' category.

Improving communication

In respect of overall liaison and especially for key decisions there are three well-evidenced proposals which would appropriately strengthen and supplement the current Code obligations:

1. Responsibility for liaison should be allocated to a nominated officer in each case, likely to be a police officer but someone who can call on an equivalent individual in other agencies. It is preferable that the nominated officer has undergone trauma-informed training for all crime types but imperative that they have for dealing with victims with enhanced rights.
2. There is evidence that where there is a contract between the nominated officer and the victim about frequency and method of communication that police are better at keeping the victim informed and so we recommend that there should be such a contract as a matter of best practice (see page 57).
3. The requirement of notifying important decisions to enhanced rights victims within 24 hours whilst well-intentioned may be too precipitate. In the Victims' Commissioner survey of rape survivors CPS decisions to take no further action in rape cases were described as 'devastating', even in some cases as having made the victim consider self-harm. Only two-thirds of those who were notified of such decisions by police recalled being given a reason and less than half felt they were told clearly and promptly. Some used language implying re-traumatisation, such as feeling 'broken, disgusted and traumatised'. We are aware of a victim who was telephoned with such a decision whilst shopping with her children. Careful preparation is important to ensure empathy and a proper explanation and the victims' advocate should be present in all enhanced rights cases. If this tight deadline is loosened it should be by a maximum of a few days strictly to be used for preparation for a sympathetic mode of delivery by the nominated officer.

Crown Prosecution Service decisions:

The CPS are required to notify important decisions by letter. A recent HMICFRS/HMCPSI rape inspection found that only a third of letters were of a high standard, the rest lacked empathy or clarity'(see page 59). This followed an HMCPSI report in 2018 which found the same faults, and made strong recommendations only to return to the issue in 2020 reporting that 'two years on the CPS is still sending poor quality letters to victims of crime'. They rated less than one in four letters (24.1%) as being of a satisfactory standard. Those in rape cases 'were worse' as were domestic abuse letters, where 'there was more to be done to demonstrate a level of empathy'. Further, the inspectors found, in line with their 2018 findings, that 'often the explanation of the CPS's decision did not sufficiently cover the circumstances and included legal terms that were sometimes difficult to understand.' They also criticised that 'Not all prosecutors take personal responsibility for their involvement in the provision of information to allow the CPS to send effective letters to victims' That was described as 'a lack of compliance' (see press notice).

This persistence suggests weak CPS engagement with victims' interests. The last-quoted comment from the Inspectorate gives an indication of a significant cultural malaise, that some CPS prosecutors do not think that it is their job to take any role in victim care and will therefore not think that they should deliver decisions sensitively nor comply with all the other rights to be set out in the Code and the Law. We find this of great concern and strongly recommend that government gives special consideration to making change here.

Communicating a decision in a safe way does not only mean writing better letters but taking responsibility for how the decision is delivered. This is particularly the case since only CPS are legally qualified, and we have seen examples of police being required to inform victims about decisions of which they themselves did not have a proper understanding. Especially poor practice is that CPS send decision letters to police to deliver in an errand-going capacity, not always by an officer who is even known to the victim. That should stop immediately.

Best practice is that an empathetic letter should be personally delivered by CPS, with the nominated officer and/or a victims' advocate present. Second best is that by specific advance agreement with the complainant, the police officer can deliver it, having ensured that they have discussed its rationale with CPS. The prosecutor must be required to note the name and role in the case of any officer to whom such delivery is delegated, and data should be collected on compliance.

In our rape survey, only 10 of 50 victims were spoken to by CPS in the first instance but that 20% is excellent practice which should be required in the Code. A third of respondents requested and received a meeting with CPS after they had received a letter. This is also good practice.

However, of great concern is the attitude of some CPS prosecutors, inferred by the inspectors, that they are so little engaged with victim care that they will not input material for a victim's letter. There were reflections of that attitude in meetings about NFA decisions with rape survivors who answered our survey:

'The meeting was a sham and I was told people would call and they never did, disgusting.'

'She was arrogant and nonchalant. No way to treat a victim of rape.'

We have prescribed how specific CPS responsibility for this should be put into the Code.

In advocating these changes, we make clear that this recommended quality, timing and method of communication is equally vital for other key decisions capable of revictimizing and retraumatising victims, insofar as they have not been involved in the decision-making itself. They include the decision to deal with a case by means of an out of court disposal, to accept a lesser plea than originally charged and to drop a case against one defendant whilst continuing it against another.

Question 5a: Should the police and CPS do more to take victims' views into account in the course of their duties, particularly around decisions to proceed with cases?

Yes. The 'key principles' which government propose placing in primary legislation (page 13 of the consultation document) include 'ensuring victims have their voices heard'. We agree that this is a key principle and should be put into legislation and we focus on it in response to these questions about the agencies. The paragraph in the consultation document dealing with this (on page 13) says:

'victims must have their voices heard in the criminal justice process *and* be offered the opportunity to make a Victim Personal Statement to explain how the crime has had an impact on them'.

We agree that there is a need for more than the offer of a VPS if the victim's voice is to be heard throughout the process. We note that Right 7 in the Code correctly sets out that the current purpose and use of the VPS is in sentencing. We doubt that it is used (as suggested on page 14) in a way that: 'can help service providers consider the right support needed.' A VPS is usually made at the time of charge, too late for victims' support services (to whom referral is made on reporting and who do and should decide what support is needed in an iterative process with the victim). We are clear that what a VPS cannot do, in any other meaningful way, is:

'help victims to have a voice in the system' (page 14)

<u>Seeking victims' views throughout their journey</u>
In what is a dynamic process, the victims' views need to be sought at the time of each important decision in which they are entitled to participate. There are many cases in which a VPS is not taken at all (in 2019, only 17% of victims remembered being offered one).

They are rarely updated and cannot forecast what a victim's views will be as the case goes on. It is important to reiterate the extent to which victims are intimately and personally involved in the whole process because of the impact of the crime and that the quality of the 'voice' which they are given stage-by-stage is extremely important to their recovery.

Additionally, of course, the agencies may benefit from the insight offered by those views. It is important that the victim's voice is represented whenever new decisions are in the offing. The process of updating a Victim Personal Statement involves an opportunity for discussion with the victim which should be used to ensure that they understand all the implications of each decision.

Right 6 of the Code partially provides for the taking of victims' views, however it consists of an uneven mix of rights to contribute to professionals' decisions and rights only to be informed after those decisions have been taken.

To ensure that victims have voice Right 6 needs fundamentally to be amended and expanded:

1. We think that it is sufficient that victims are merely notified about arrest, interview and release, as provided at Right 6.1. However, victims' views should be taken, for consideration in respect of bail conditions where the defendant and the victim are known to each other and there may be personal safety issues. The bail decision will remain that of the police. In paragraph 6.5 is a typical get-out clause redolent of the current status of Code 'rights' as merely favours to be delivered if convenient. It reads:

‘There may be a time when a service provider is unable to provide you with updates and/or use your preferred method of contact but in these instances they will tell you why’ This should be removed. Complaints by victims that police do not update them, sometimes for weeks or months and often despite victim’s best endeavours to get in touch, are endemic. It is not compatible with the government’s vision of a victim who has a voice in proceedings that the ‘right’ to be updated can be suborned as long a service provider who has been ‘unable’ to provide updates will ‘tell you why’ months later.

2. Paragraphs 6.6,7 & 8 provide that a victim has a right to be heard on whether to prosecute or use an out of court disposal. This is compatible with the government’s intention to give victims a voice. However, in 6.7 the last sentence
‘Where this is not possible for practical reasons, the police or the Crown Prosecution Service will tell you why’
is yet another example of why there is a culture of disregard for Code rights. It sets out a readily available escape clause from any real obligation. We are told that victims often feel guilty about ‘bothering’ police for information whereas what is required is confidence that they are entitled to information and the police/CPS are obliged to deliver it.

3. Right 6 must be changed to provide that in every case where a decision is to be made on whether to prosecute or not, the victim must be heard. Currently Right 6 provides for that voice *only* where there may be an out of court disposal (OOCD) instead of a prosecution. In every other case the right is only to be told the reasons for the decision after it has been taken (see 6.9 and 6.10). This is not consistent and while giving victims voice in some smaller cases where an OOCD may be a reasonable option, this excludes their voice from every decision where the choice is either that there is a prosecution or nothing at all. This exclusion applied to the vast majority of cases and will particularly exclude the victims voice from every case where the victim is entitled to enhanced rights and in all other serious cases where the crime is likely to have seriously affected the victim, sometimes, permanently. Currently, the government’s ambition to give victims a voice is clearly being very minimally realised. The CPS Prosecutor’s Pledge says that they will ‘take into account the impact on the victim and their family when making a charging decision.’ That commitment, and a similar one for the police, should be strengthened to make it a right that the victim’s voice be heard in every charging decision whoever takes it. We suggest that it is set out in statute that no charging decision should be made in a case where there is a victim, without the voice of that victim being heard and listened to by the decision-maker. If there are exceptional circumstances which can be envisaged by the police or the CPS, those could be set out specifically and narrowly in statute with no other ‘get out’ clause. The statutory provision must require that the victim is told of this right and actively consulted by the decision-maker. Right 6 should be amended to match.

We have already quoted above how huge the impact of such decisions can be and how profound the effect and have illustrated that through the examples in our rape survey. There is no question of suggesting the that victims’ views should be determinative, but they must be listened-to. It is well-established that victims who are consulted and heard cope significantly better if a decision is contrary to their wishes, eventually made against them (see ‘What works in supporting victims of crime: A Rapid Evidence Assessment’).

Victims are likelier to help the authorities in the future if they feel treated fairly.

Question 5b: Should there be an explicit requirement for the relevant prosecutor in a case or types or cases to have met with the victim before the charging decision, and before a case proceeds to trial?

Yes.

There should be an identical statutory right for a victim to be heard if, in any circumstances, a decision is to be made about dropping/discontinuing a case after it has been charged, and/or if CPS or police are considering accepting a plea of guilty to a charge which is different from the one on which the victim has been consulted.

Currently there is no victim's voice in either of those decisions though they can have the same or a stronger impact on a victim. Giving victims a voice cannot be achieved by giving a few victims that right here and there. As we turn now to the Victims Right to Review and Q 5c, we would add that it is imperative that the voice has to be listened to by the actual decision-maker and that the decision-maker is identified in every case.

Question 5c: What changes, if any, could be made to the Code in relation to information about the Victims' Right to Review scheme?

A number of changes are required in order to ensure that the Victims' Right to Review (VRR) is effective and victim centred.

1. Both VRR systems should be set out in statute and explained in the Code.

2. Consistent with what we propose in our answers to 5a and 5b, both VRR systems should commence with the decision-maker identifying themselves to the victim so that the correct scheme can be pursued. We think that the right to know who took the decision should be added to the Code.

3. Consistent with what we have said in answer to 5a and b above, both VRR schemes should be changed to apply to all charging and related decisions, including where a case is dropped after charge, a different charge from the one discussed with the victim is substituted, where there is a plea bargain, where charges are dropped against one defendant but continued against another, and in any other similar circumstance. This could be put into legislation for clarity and the Code altered accordingly.

4. An urgent fix is required for a large number of cases which fall between the two VRR systems, excluding the effective use of either. This happens when police seek early legal advice from the CPS and receive an indication that the case will not/is unlikely to be charged. The police have little choice but to take no further action. Neither the NPCC nor the CPS Right to Review has any effect. Where the CPS is the charging authority, the NPCC VRR is triggered only if police have decided that it doesn't meet the test for referring it to them(see page 23 of the Victims' Code) but if that decision is made on the basis that the CPS have told them that it won't meet the test then that is all the police can tell the victim who is seeking a review. Police have no means of changing a decision which theoretically they made but, pragmatically, did not. On the other hand, the case has never formally entered the CPS arena so their Right to Review cannot be actioned by the victim. (Nor, for the same reason, can there be a proxy via the police own right of appeal against a CPS refusal to charge.) We have been told that this occurs in a wide range of cases, clearly more serious ones where CPS would be the charging authority. We suggest that the reality that the CPS made the decision is the correct approach.

5. A further urgent fix is needed to prevent a decision not to prosecute from being made final either by irreversible notice to the defendant, by asking a court to sanction it or in any other way until time for a VRR has passed. (Currently CPS require requests to be made within 10 working days of the decision letter, target 10 more for their decision and if there is a further request for independent review that has the same time limits.) Currently, the VRR is frequently ousted by CPS choosing to take one of those irrevocable steps so that they are unable to change their decision on review.

6. The Code does not explain how the VRR system works. It should be made clear that victims have the opportunity not just to ask another police officer or CPS prosecutor to reconsider the case but to make representations as to why the case should proceed. The case of FNM makes clear that the victim is entitled to a 'fair opportunity' to do so and if representations are made, they must be taken into account. The CPS website only says; 'Any representations which are made will be considered but must be submitted within 14 days of the request for a review'. The full facts should be set out in the Code with a duty that CPS explain the opportunity, an important supplement to the victims' voice, added by the High Court.

Question 6a: What are the benefits and costs to greater or different use of Community Impact Statements?

We have no experience of these. Please note that the domestic abuse sector is registering serious concerns about any proposed use in domestic abuse cases, please see inter alia the response from Women's Aid.

Question 6b: Can you provide an example of where one has been used effectively?

As above.

Question 7a: What changes, if any, could we make to allow victims to be more engaged in the parole process?

Question 7b: What do you think would be the advantages and risks of implementing those changes?

We advocate for open justice and greater victim engagement, but we have reservations about the government's current proposals to open parole hearings to the public. We are particularly mindful of the need to protect victims and other third parties and to avoid any step that might inadvertently inhibit offenders and professional witnesses from being candid in response to questions from the Parole Board who need information in order make an accurate assessment of the offender's future risk of serious harm.

Other opportunities for greater openness and victims' understanding would include more information being shared with victims during the offender's sentence, more victims being persuaded to participate in the Victim Contact Scheme (VCS) and a review of the Parole Board's high-level summaries of parole decisions to look for means to share more information with victims who do not wish to attend the hearing.

Current Victim Engagement with the Parole Process

The Parole process has been opened up significantly from what was a closed system so that now victims can: submit a Victim Personal Statement and present it in person at oral hearing; receive a summary of the decision; and apply for decisions to be re-considered. During lockdown use of video-links set a precedent which could become the norm, given the difficulty of victims attending hearings held in prison. There is better engagement with victims on what to request in respect of licence conditions.

Open Parole Hearings

Parole decisions can generate controversy, often due to poor information on how decisions are made. Victims are likelier to accept a release decision less negatively if they have more information and see the painstaking care taken by parole members. However, in coming to their assessment, Parole Board members have to ask personal questions to the offender in relation to their former life, the offence, their mental and physical health and their treatment and progress in custody. This questioning can be painful and retraumatising for victims.

Professional report writers must feel able to speak openly to the Board and positively about the offender, where appropriate, without feeling constrained. Hearings will also involve information relating to the victim and the offence which may cause them distress if heard in public. Most offenders attend multiple parole hearings before being released, which can cause distress to happen time and again, risking any form of closure. Whilst the decision whether to attend the hearing must rest with the victim, there would almost certainly be a need for them to have professional support at any such hearing as well as support to cope and recover in the run up to and after the hearing.

All this risk to recovery and wellbeing of victims would be worse if the hearing were to be open to the public.

It would be better to restrict attendance to the victims of the crime but additionally, given those risks, to give the Parole Board discretion about full or partial access to the hearing. There can be multiple victims and extended families involved and thought should be given to victims observing hearings remotely and not from within the prison, possibly in victim hubs, where support was readily available if required.

Re-engaging Victims

Access to the parole process is dependent upon victims opting into the Victim Contact Scheme which many do not, for a variety of reasons, and are therefore unable to participate or have their voice heard. The Parole Board says that only 30% of parole hearings include a victim personal statement and though there will be victims who do not wish to make one, we suspect that many who did not feel able to engage with the Victim Contact Scheme do not know that the offender is being considered for parole. Too often we hear reports of victims being shocked to find that the offender has been released through a third party or by bumping into them.

The Probation Reform Programme extends to the operation of the Victim Contact Scheme and we have asked them to consider how they might re-engage with victims outside the scheme in time for the parole process. There is a proposal to set up a dedicated team to trace victims of legacy cases which ought to be done to coincide with any other changes to make the parole process more transparent. Greater transparency will be of limited value if thousands of eligible victims remain outside of the Victim Contact Scheme.
We also need to consider how the initial offer is made to victims to join the scheme. Pilots have shown that having the scheme properly explained, by probation staff, significantly improves the opt in rate.

High Level Summaries

Improving victim engagement in the parole process must include better high-level summaries of the reasons behind decisions. Over 2,500 victims in the Victim Contact Scheme have opted to be sent high level summaries. Last year, the re-consideration mechanism was introduced. This offered an opportunity for both offenders and victims to challenge the Parole Board. High-level summaries must provide sufficient information not only for the victim to understand how the decision was reached but also to help a decision whether to request for re-consideration. It seems to us that there is scope to share more information. Allowing victims to attend parole hearings means they will hear much greater detail and it would be incongruous not to make the same level available in the subsequent written high-level summaries.

Greater transparency

Opening up parole hearings will not by itself make the parole process more transparent. It needs to be part of bigger reform covering the victim journey from trial to release. Victims in the Contact Scheme receive an annual contact letter and, routinely, it will advise them that there have been no significant developments, making no reference to offending behaviour work, signs of maturation, remorse or any other indicator of progress. Eventually, when the offender is eligible to apply for parole and the victim is invited to become more engaged, they will know very little about the offender, will not understand the context for the parole review and are therefore often shocked and upset that the offender is considered low risk or even ready for release. A small but important step that we have driven is that re-categorisations will be mentioned in annual letters, but we need to go further. We would ask the government to consider how we can convey to victims information on a range of indicators of progress or regression, for example, better custodial behaviour, signs of remorse, or active engagement on offending behaviour programmes throughout the offender's sentence. The purpose of pursuing better victim engagement with the parole board from our point of view is that, insofar as a victim wishes it, it allows them the maximum opportunity to understand the progress that the offender has made and so, we hope. be better able to accept their release. It is obviously the case that in most cases the offender will be released at some time and this seems to be a potential route to making that less traumatic.

Question 8: Should victims of mentally disordered offenders be allowed to make and submit a Victim Personal Statement when the offender's detention is being reviewed by the Mental Health Tribunal? Please explain your answer.

Yes. In addition, we have grouped here, for the convenience of the Ministry of Justice, two further requirements that we believe are essential to ensure equal treatment for victims of mentally disordered offenders.

Our report, '[Entitlements and experiences of victims of mentally disordered offenders]' was published in 2018 and called on victims of mentally disordered offenders to be given the same entitlements and support as other victims. This includes access to a victim liaison officer, the right to submit a Victim Personal Statement to Mental Health Review Tribunals and the right to attend hearings. At present, this group of victims are excluded from participating in the review process completely other than being able to request discharge conditions. This situation is wholly inconsistent with the status of participant that we are calling for in this paper.

Giving these victims the right to have a voice at the tribunal not only provides parity of treatment with those victims whose offenders are referred to the Parole Board, but it is also consistent with the status of victims as active participants in the criminal justice system. It also assists victims in coping and recovering from what has happened to them. We have pressed for these changes to be made, and now consider that there should be a statutory requirement to provide this group of victims with the same level of treatment as all other victims.

Additionally, in order that the close relatives of victims killed by a mentally disordered offender should be aided to cope and recover, it is imperative that they have information about the motivations of the offender and about how the life of their loved one was taken. In cases where the offender is not mentally disordered, this will be made clear, as part of the narrative by the criminal justice agencies and/or in open court. Victims of mentally disordered offenders deserve similar information to help them with closure.

In cases where there are mental health issues, psychiatrists will usually be instructed for the prosecution and defence. If they agree as to a diagnosis and the role it played in the offender's behaviour, a plea of guilty to manslaughter can be agreed by the prosecution and defence in private and any subsequent hearing will be short and relate to the appropriate medical disposal of the defendant. There will be no mention of their motivation or much of the factual scene or the context. This is not to be criticised. However, in such instances, the mental state of the defendant is not publicly disclosed and the way in which his/her illness gave rise to the killing is never made known to the family. That often leaves a family with no further information other than their relative was killed by a mentally disordered offender.

It is well known and well researched that in order to cope and recover from such trauma, contextual information surrounding the case is an important determining factor. Victims of mentally disordered offenders in this situation will be refused access to any material about the defendant's motivations and illness, on the grounds of 'patient confidentiality'. Whilst this is an essential right and should not be contested, it is established in precedent that that if the public interest requires it, for instance where a diagnosis is disputed, material about the nature of the offender's illness and their motivations can be disclosed publicly. Famously, there was a full investigation in a public court about the mental state of the Yorkshire Ripper.

We recommend that in every case whereby a victim has died at the hands of a mentally disordered offender, the criminal justice agencies involved in such a case should be required to request of the psychiatrists to draw up an agreed statement to define the nature of the offender's illness and how it impacted upon the motives for

the killing. Victims' families must be provided with appropriate information to help them cope and recovery. Without any such context and understanding, their recovery will be far harder. in order to level-up the rights of these victims so that they may be given the information to cope and recover. Without any context and understanding, coping will be far harder.

Chapter 2 – Improving oversight and driving better performance

Introduction to chapter 2 response

This chapter is asking for ideas of a structural framework that needs to be put in place to consolidate the victim's position as participant in the Criminal Justice System (CJS) and better deliver the 12 rights of the Victims' Code. The Bill would then put the building blocks of this into legislation.

The framework needs to:

- Specify processes and responsible agencies for monitoring compliance with the Victims' Code.
- Specify feedback loops whereby learnings in one part of the system can be fed through to influence actions and change in another part of the system.
- Incorporate a process dedicated to accepting, investigating resolving complaints solely concerning breaches of the Victims' Code (currently no single agency has responsibility for complaints of breaches of the Code and breaches of the Code are frequently ill fitted to be dealt with by the agencies' own complaints systems).
- Work as far as possible within agencies and structures that are already in place (not least for pragmatic reasons like time and cost).
- Strengthen accountability and drive improvement.
- And it needs to work across multiple geographic levels, to allow for the implementation of improvements at the national level as well as effective delivery at the local.

Figure 1 (appended) suggests such a framework, which might be adopted as a whole or in part.

In summary, **we recommend that the Victims' Commissioner, who is required by statute to keep the Victims' Code under review but does not currently have the powers necessary to do that, is given sufficient enhanced powers to oversee its operation at the national level** (see answer to Q13). The main vehicle for this would be an independent, Victims' Commissioner review of the delivery of the Victims' Code, on the back of which she might take actions like discuss with the inspectorates specific extra inspections or recommend and lobby for changes to the Code or changes in practice around Code delivery. Such reviews would take place annually, then when a culture of compliance begins to develop, less frequently - perhaps every three years.

We recommend that Code compliance is monitored in two ways:

(i) **by the regular collation and publication of core set of data by Ministry of Justice which should be shared with the Victims' Commissioner for use in her reviews (see Q13); and**

(ii) **by the activities of the three relevant inspectorates, which would include a rolling programme of thematic inspections on the Code, done jointly (see Q11).**

The Victims' Commissioner's role in promoting the Code and the needs of victims would be fulfilled at the local level by **Independent Victims' Champions** (see answer to Q9), appointed by the Police and Crime Commissioner but functioning at arm's length to:

- promote the rights of victims, and seek to ensure that criminal justice agencies promote these locally too;
- receive and resolve complaints about breaches of the Victims' Code with a working principle of trying *actively* to resolve breaches of Code rights during the currency of the case and not merely to work on the basis of pursuing remedies after the event;
- oversee monitoring of delivery of the Code with local agencies, helping to ensure the mechanics of the process go smoothly (e.g. information and data on victims and Code

compliance are collected and fed back in a timely way to the correct agencies, as well as used effectively within office of the Police and Crime Commissioner.

We recommend that the Independent Victims' Champions should become the focal point at a local level to receive seek to resolve and monitor all complaints made in relation to the Code (see answer to Q 21).

If those complaints are not satisfactorily resolved, they would be referred directly to the Parliamentary and Health Service Ombudsman (PHSO). The PHSO is an existing agency, in place to receive complaints not only against the health sector but also against criminal justice agencies but, in fact, it receives few justice ones. It is the last resort after a complainant has exhausted an agency's internal complaints system and can only be approached with the support of the complainant's MP. However, it DOES deal with some CJS complaints and has resource and it also has powers to order redress. We see no purpose in creating another organisation to do the same. We see the PHSO as the appropriate national recipient for complaints about Code breaches which are not resolved locally.

We emphasise that we are proposing this new complaints structure – to Victims' Champion and then to PHSO - for complaints about breaches of the Code only. We think that a Code specific complaints system is the best route for victims. Most breaches of the Code are unlikely to fit into or be appropriate for an individual agency's multi-level complaints systems and sometimes it is not clear which criminal justice agency bears responsibility for the breach. Complaints about the Code are likely to be victim specific, and a local victim focussed Champion with an active trouble-shooting and resolution role is best placed to pursue these rights, backed by the existing national Ombudsman in default.

Where there may be other/additional complaints against an agency, they should be taken forward through the routes prescribed by those agencies with the PHSO continuing to play its current role as the last resort in those complaints.

We strongly recommend that the current requirement that complaints can only be escalated to the PHSO via their MP is removed for all complaints, - whether breaches of the Code or agency-specific complaints. We see that requirement as an unnecessary obstacle.

Question 9a: Local-level partnership working is vital to ensuring the delivery of a quality service to victims. How can agencies better collaborate locally to deliver and monitor compliance with the Code?

Question 9b: How could agencies be encouraged to consistently share data at local and national levels to support monitoring of Code compliance and drive improvements?

Measuring Code compliance – data collection

The Victims' Commissioner's 2020 Victims Law Paper set out the history of how compliance with the Victims Code has been monitored to date. It states:

"The 2006 Victims' Code was accompanied by a compliance framework, and yet, since that time, we have never had clear picture of compliance across England and Wales. This has restricted our ability to identify problems and improve the service victims receive.

In April 2018, the National Criminal Justice Board agreed to a cross-government approach aimed at improving data and transparency on whether victims are receiving their entitlements in the Code and whether criminal justice agencies are meeting their obligations under the Code. Police and Crime Commissioners, taking responsibility for compiling performance data for their local area, would oversee a new monitoring process of measuring criminal justice partners' compliance with key entitlements in the Code.

The new monitoring arrangements commenced in April 2019, but they have been beset with difficulties. These include: limitations in what data can be extracted from agencies' data systems, resulting in Police and Crime Commissioners having to rely on data sampling; variable communication with criminal justice agencies on how the new monitoring system will operate; and PCCs being unable to compel other agencies to provide information."

As we understand it, the Ministry of Justice (MoJ) is in the process of developing what it hopes will be a clear and consistent set of metrics on Code compliance, which we welcome. We think two types of information are relevant here. Firstly, data which tells us who the victims are (so that we can, for example, ensure that different groups are getting equal access to services, and also so that we simply know the core demographics of the victim population, in a similar way to knowing the demographic composition of the offender population). For example, age of victim needs to be collected consistently (across agencies) via date of birth, and ethnicity should be captured at an agreed level (e.g. ONS' eight level classification). **A table of suggested data is appended**. These need to be either easily extracted from administrative systems or collected onto these systems as an add-on.

And secondly, the metrics should include data on offer and receipt of Victims' Code rights (e.g. victim has made a Victim Personal Statement; victim choice of special measures). It may be appropriate to use a dip sampling approach for some aspects of Code compliance, but the sampling criteria need to be carefully specified by MoJ, so a proper random sample is obtained, and the information needs to be available in case files.

This information needs to be augmented by qualitative data (we hear that many PCCs carry out regular surveys of victims and collate case studies, and the insights from these should also be used at the national level). Our response to questions 17-19 considers research methods in further detail.

It feels appropriate for day to day monitoring of Code compliance to sit with Police and Crime Commissioners (PCCs), who chair local criminal justice boards, have local responsibility for delivery of victims' services and specifically hold local policing to account. However, in order

to do the job effectively and avoid the problems outlined above, **we believe there needs to be a legal requirement for agencies listed in the code to collect this data and supply it to PCCs in accordance with agreed reporting periods and a legal requirement to forward it to the Victims' Commissioner for the national assessment.** Recommendation 20 of the Victims' Commissioner's Victims' Law Policy Paper stated that PCCs should be given the statutory duty to monitor compliance with the Victims' Code at the local level and be given the statutory power to request data from CJS agencies as listed in the Code, in order to fulfil this duty. This is important because, as experience since 2006 has shown, if hard-pressed agencies are not legally obliged to provide data, there is a high chance they will not.

Introducing the Independent Victims' Champion

Some PCCs (The Deputy Mayor for London, PCC for Durham and PCC for West Midlands) have appointed Victims' Champions, who can act as another lever for promoting the Code and facilitating delivery across agencies**. We recommend there should be a requirement for all Police and Crime Commissioners to appoint a local Independent Victims' Champion within three months of taking office - someone who is independent of all criminal justice agencies and accountable to the Police and Crime Commissioner but operating at arm's length from the PCC** (Recommendation 23 in the Victims' Law Policy Paper). This person would be responsible for providing local scrutiny of the police and other criminal justice agencies in relation to victims, as well as being a point of contact when victims are dissatisfied with local services, as set out above. The amount of resource allocated could be proportionate to the size of the area, as we believe it to be in the three force areas where they have been appointed so far. The Independent Victims' Champion would play a role in encouraging collaboration across local agencies, and reviewing the compliance data, helping to iron out issues with data provision, and encouraging action where compliance is shown to be below par. They would promote the Code locally, seeking to ensure, for example, that local criminal justice agencies were making *all* victims fully aware of their rights under the Code (which should include the dissemination of nationally-produced communication materials, accessible to all groups). The Independent Victims' Champion would be the victims' voice on the Local Criminal Justice Board, with a standing agenda item at those meetings. They would be a key local point of contact for the Victims' Commissioner, a link between her national priorities and the position for victims at local level.

Publishing data

We recommend that this monitoring data is published. The publication of monitoring data would encourage co-operation and provision of data, as those collecting the data would then understand precisely what it is used for and would have a stake in driving up the accuracy of reporting and also ensuring that their local-level metrics are as good as they can be. We therefore recommend that there is a statutory requirement that these locally collected metrics should be published, perhaps as part of PCCs annually reporting requirements or centrally, by MOJ (perhaps in tandem with the Home Office).

Question 10: What should the role of PCCs be in relation to the delivery of a quality service and commissioning victims' support services, and what levers could be given to PCCs to deliver this role and enhance victims' experiences of the criminal justice system at a local level?

The Victims' Commissioner 's Victims' Law Policy Paper (2020) made a number of recommendations relevant to this question, including the appointment of Independent Victims' Champions and giving PCCs statutory responsibility for local monitoring of Code compliance, discussed above in Q9.

Local accountability – PCC plans for victim services

In addition, the paper made the point that there needs to be local accountability. In 2015 responsibility for providing the bulk of victim support services was devolved to Police and Crime Commissioners. Currently, it is not clear how their local electorate might be expected to hold them to account for their delivery of victim services. Consistent with the Conservative Party manifesto commitment to make PCCs more accountable, **we recommend there should be a statutory requirement to publish their plans for devolved victim services. This requirement should form part of their Police and Crime Plans which is a basis for more effective local scrutiny of the delivery of local victim services.**

Local accountability – commissioning and a duty to promote the Victims' Code

Police and Crime Commissioners are uniquely placed to hold the police to account and can scrutinise a force's activities, set targets, confer responsibilities. They chair the Local Criminal Justice Boards, which brings CJS agencies together at the local level. **We recommend that PCCs are legally required to incorporate effective promotion of the Code into the commissioning of services** – making sure, for example, that services incorporate the Victims' Code into their training, induction and practice. This would raise the profile of the Code within victim service agencies and help ensure they promote it adequately to victims.

Local accountability – commissioning and the Public Sector Equality Duty

To ensure service delivery caters for all demographic groups equally, **we recommend PCCs are required to set out within their Police and Crime Plan how they intend to meet their public sector equality duty (PSED) in relation to victims services and delivery of the Victims' Code.** The collection of a robust set of demographic data (see Q9) will be critical to this function.

Question 11a: Do you think the current inspectorate frameworks and programmes adequately focus on and prioritise victims' issues and experiences and collaborate effectively across the criminal justice system to do so?

No, we do not. Our reasons are explained below.

Insufficient focus on victims' issues in existing inspections

Inspection is, alongside monitoring, the best way of enforcing Code compliance. The inspectorates are independent, and they can announce their findings to the media – an important lever for change. Having an inspection programme which focuses on victims sends a wider message that the victim is a participant in the system and the way victims are treated is a priority for the criminal justice system.

We do not believe the current inspectorate's programmes adequately focus on victims' issues. For example, in Her Majesty's Inspectorate of Constabulary and Fire and Rescue (HMICFRS) PEEL inspections, while the first set of questions (out of 12) is 'how good is the force's service for victims of crime?' this is about call handling, deployment of resources, crime recording, proportionate investigation, and outcomes assigned. There is one mention of the Victims' Code ('1.5.2 The Code of Practice for Victims of Crime is adhered to') and this appears to be a qualitative assessment based on agreed level of contact and appropriate victim care and engagement. There is, for example, no systematic examination of whether key information is provided to the victim within the five working day window the Code currently stipulates, or one working day for those with enhanced rights. We suggest these are concrete rights that are not difficult to inspect on and should be incorporated into PEEL inspections going forward.

We recommend that Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS), HM Inspectors of Probation (HMIP) and HM Crown Prosecution Inspectorate (HMCPSI), as the bodies which inspect the CJS, are legally required to consult the Victims' Commissioner annually on how the victim's experiences is incorporated into their ongoing programme of inspections.

No Victims' Code inspections

HMICFRS has produced few thematic reports which focus on victim issues in recent years, although the super-complaints programme has done so to some extent and can provide an effective vehicle for investigating police treatment of victims where shortcomings are believed to be systemic.

Likewise, HMCPSI reports only on a few narrow victim or Victims' Code-related criteria: for example, the appropriateness and timeliness of Special Measures applications, and thematic reports on communication with victims (e.g. CPS letters).

Importantly, there are is currently no inspection activity that deals directly with Code compliance nor that looks at the system from the victims' perspective.

Question 11b: Could inspectorates be reinforced further in relation to victims?

Yes.

We are clear that inspectorate activity should be more victim-focused, which may require the inspectorates to be resourced to do this and will require them to appoint staff with a remit over victim issues. We make recommendations about a programme of inspectorate work focused on the Code at Q12, below. One notable omission is that none of the current inspectorates covers the courts – and since some of the Code rights involve the court system or the provision of information by the court system (for example, Rights 7, 8 and 9, all of which are concerned with trials) this may be an area where the inspectorates' functions and coverage may need to be reviewed. However, we understand that some residual powers were retained when the former Courts Inspectorate was discontinued and can be exercised by the current inspectorates, though we are not clear whether they are actively in use or how extensive they are.

As discussed above (see 'a') we recommend that the inspectorates are required to consult with the Victims' Commissioner on their programme of inspections, annually. For every relevant inspection, a reference or advisory group made up of victims and/or representatives from the victim services sector should be appointed in consultation with the Victims' Commissioner. These reference groups will provide valuable input into the issues, problems and what the inspection criteria should be. The sector has a considerable knowledge about what's working and what is not working for victims, and this needs to be harnessed to help direct the work on Code delivery and compliance.

Question 12: Do you think that the current inspectorate arrangements allow sufficient collation of, and reporting on, victims' data and issues across the criminal justice system? Could they be further utilised for this?

Improving PEEL inspections

As discussed above in Q11, neither PEEL inspections nor HMCPSI area inspections take account of Code compliance and, resources permitting, this element of force inspection reports could be improved. For example, it would seem feasible to capture (from casefiles) whether victims are told of key developments on their case within agreed timescales. On the basis of this and other relevant measures, forces and CPS areas should then be rated on Code delivery as a sub-criterion of effectiveness according to the five-point scale that is currently in use (outstanding, good, adequate etc.) This would triangulate with the data collected from the police by the PCCs.

Introducing a new rolling programme of joint inspections on the Victims' Code

We recommend that there should be an additional rolling programme of joint inspections specifically on the whole of the CJS's delivery of the Victims' Code. Because responsibility for the Code is dispersed, such a programme of inspections would necessitate joint working between HMICFRS, Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI) and Her Majesty's Inspectorate of Probation (HMIP). HMIP would be specifically concerned with Right 11, to be given information about the offender following conviction.

Such inspections would examine all 12 rights or a sub-set of these at an appropriate level of local geography (e.g. police force area, CPS area or HMCTS area, depending on how these map onto each other and the level of granularity that is feasible). It would use a transparent system of ratings (this is something the bodies discussed later in the consultation, like Ofsted and the Care Quality Commission, have in common, and the rating scales they use are all very similar – see Q. 14). We would envisage that such a programme would lead to inspections of police forces or groups of forces, CPS and HMCTS regions (or parts of CPS and HMCTS regions) around once every 3 years. Although infrequent, we believe that the anticipation of such inspection will drive up standards of delivery around the Code (as they seem to do in other sectors, like schools and care), as will the possibility of negative media attention for local criminal justice agencies that are found to be inadequate in their treatment of victims.

While HMICFRS does not have the power to mandate change, it does sometimes carry out follow up activity following thematic inspections. For example, in August 2021 it published a spotlight report on fraud as a follow-up to the recommendations from Fraud: Time to choose – an inspection of the police response to fraud, published April 2019. We believe this is a useful mechanism to help effect change which should be adopted when the compliance with the Code is inspected.

As discussed above and below, we recommend that the work of the Victims' Commissioner interfaces with the work of the inspectorates in key ways: the inspectorates are required to consult with the Victims' Commissioner annually on their programme of inspections; inspectorate findings (in particular the joint inspections on Code compliance) constitute a key source of data for the Victim Commissioner's annual review of compliance; and we also recommend that the Victims' Commissioner should be able to request that the inspectors inspect a geographical area or theme where compliance is shown to be weaker or failing. In this way, the Victims' Commissioner would help to set the direction of inspectorate activity in relation to the Code and would ensure that inspection findings were systematically incorporated into her oversight of Code compliance.

We also recommend that the Urgent Notification process currently used only where the Chief Inspector of Prisons finds that prisons are dramatically underperforming to trigger the involvement of minister is spread to the other inspectorates. We understand that this provides an incentive to raise the general standard of prisons as governors do not want to fall below this level. It could also be symbolically important that underperformance in respect of victims' rights can require ministerial intervention.

Question 13: What are the most critical functions to enable an effective Victims' Commissioner?

The Victim's Commissioner and her predecessor have had some significant successes in improving the criminal justice system for victims. For example, following repeated calls by the Victims' Commissioner, the government recently agreed to amend the Police, Crime, Sentencing and Courts Bill to protect victim privacy, whilst ensuring fair trial rights (see here).

The **Victims' Commissioner** 's 2020 report, Constitutional Powers of the Victims' Commissioner for England and Wales, examined the functions and current powers of the VC in comparison to those of the other commissioners and the criminal justice inspectorates in England and Wales.

It concluded that there are significant gaps in the powers of the **Victims' Commissioner** in relation to the Victims' Code and that, at present, the Code is neither enforceable in law nor subject to effective review. It identified changes that could be made to close those gaps and enable the Commissioner to better fulfil her statutory duties, which are: to promote the interest of victims and witnesses; to encourage good practice in the treatment of victims and witnesses; to keep under review the operation of the Code (an obligation which cannot be fulfilled at all the moment); publish an annual report; and give advice to ministers on particular issues when asked to do so. **In particular, the Victims' Commissioner does not, at the moment, have the power in statute to undertake the review of the Code, and this needs to be addressed in the legislation.**

Keeping the operation of the Code under review

The Victims' Commissioner is established to be "a promoter, an encourager, and a reviewer of operational practice, and is [importantly] the only statutory public body with these overarching duties in relation to victims" (p.13). Hence the Victims' Commissioner has a singular responsibility to introduce a degree of accountability in how agencies, including central government, treat victims and witnesses. If victims are to be given their rightful recognition as participants in the system, then their rights must be fully respected and delivered at each stage of the process in a parallel way to the respect for and delivery of rights to the defendant. A key function of an effective victims' commissioner is therefore this oversight: not only keeping the Code under review, but also monitoring its delivery and highlighting any inadequacies. While this is perhaps the most critical function of the Victims' Commissioner, it is the one where the Commissioner has least legal power to act and we make a number of proposals to address this below.

Making recommendations to improve the treatment of victims and witnesses

Allied to this, the Victims' Commissioner may make recommendations to an authority within its remit and has done so through a wide-range programme of reviews carried out over the last four years or so. No other statutory public body carries out a programme of research solely focused on victims, so here, again, the Victims' Commissioner 's contribution is unique. However, agencies are under no obligation to respond to the Victims' Commissioner's requests for information and data or to respond to her recommendations. This contrasts with the powers of the Domestic Abuse Commissioner, whose recommendations must be responded to. The fact that agencies don't need to respond means the Victims' Commissioner 's recommendations tend to receive limited attention and take-up. We make proposals to strengthen the Victims' Commissioner 's powers in this respect below.

Consulting with the sector and acting as a conduit between the sector and government

In giving advice and making recommendations the Victims' Commissioner may consult with anyone as appropriate and this is where her strong relationship with the victim service sector

comes in. The Victims Law Policy paper outlined 34 many recommendations for the Victims' Law based on a series of roundtables with the sector. These are the key changes that those who work with victims feel that victims need. The Victims' Commissioner is ideally placed to be a conduit between victim services and government and its agencies, consolidating and reflecting their views in an impartial and actionable way. Hence, we see this as a critical function of the role.

Increasing the Victims' Commissioner 's powers

The Victims' Commissioner does not currently have sufficient powers to carry out her duties effectively, particular with reference to overseeing the operation of the Victims' Code. In the report, Constitutional powers of the Victims' Commissioner for England and Wales, Cox et al., (2020) suggested a range of enhancements to the Victims' Commissioner's powers to enable her to carry out her duties in relation to the Code, giving advice to ministers and making recommendations to criminal justice agencies. Importantly, these enhanced powers would place the Victims' Commissioner on a par with other roles (commissioners and inspectorates), since currently the Victims' Commissioner has the widest remit of any commissioner, but the most limited powers and the least resource. We make eight recommendations in relation to the Victims' Commissioner's powers:

Firstly, the powers relating to the Victims' Code should be strengthened so the Victims' Commissioner is empowered to undertake effective review of the operation of the Code. This necessitates the following changes: that the Victims' Commissioner be given adequate resource to monitor and review the operation of the Code; that the Victims' Bill places a statutory obligation on the Ministry of Justice to establish protocols for data collection on Code compliance by agencies named in the Code. There are currently no such protocols and data collection on victims is fragmented, inconsistent and inaccessible (see Q9b); and that the Bill establishes a regulatory framework governing how the Victims' Commissioner may access relevant data and conduct a review.

Secondly, the Victims' Commissioner should be given powers to identify weaknesses in the implementation of the Code by reviewing the operation and implementation of the Code (annually at first to establish a culture of compliance and then less frequently perhaps every three years) and reporting directly to Parliament. Cox et al. suggest and we agree that the Victims' Commissioner 's ability to promote the interests of victims and witnesses is contingent on this, because without thorough review of how the Code is working, the VC is unable identify where rights are being left unmet and what adjustments to the Code itself might be needed. (Cox et al., 2020, ibid). This is similar to the requirement on Her Majesty's Chief Inspector of Constabulary, Fire and Rescue to report annually to Parliament on the state of policing.

Thirdly, the Victims' Commissioner must be enabled to consult directly with victims on what constitutes good practice in criminal justice setting. The Commissioner should also be enabled to consult with other bodies, and there must be a legal requirement for CJS agencies listed within the Code to comply with the Victims' Commissioner's work, including, where available, providing data on request (see Recommendation 18 from the Victims Law Policy Paper). Currently, "the VC has no explicit legal power to consult with public authorities, voluntary bodies or individuals or classes of individuals, or to conduct training or research" (p.30). Cox et al. (2020) note that explicit power to give advice, other than to ministers, and to conduct and fund research originally existed under the terms of the 2004 Act but were removed by the Coroners' and Justice Act 2009. However, the power to conduct research was partially restored and resourced during the term of the previous Victims Commissioner.

While encouraging best practice is one route to encouraging improvement, the other lever is giving advice on how to improve standards. Further, if both her advice and identification of

best practice is to be well-founded, the Commissioner needs to be able to carry out research and interact in ways to which agencies are legally obliged to respond. Hence the Victims' Commissioner must be able *to rely* on the co-operation of others, and, to this end, **we recommend there should be a statutory obligation on public bodies named in the Code to facilitate and co-operate with the Victims' Commissioners reviews. Relevant agencies should also be required to respond to these recommendations within a designated time period.** This is a power the Domestic Abuse Commissioner (DAC) holds.

The Victims' Commissioner currently has a nominal budget for external research or running consultations and **we recommend the Victims' Commissioner is further empowered and resourced to commission research and run public consultations as part of her research function**. The stipulation of a research function and funding would place the Victims' Commissioner on a par with the DAC and Independent Anti-Slavery Commissioner holds (see Table 2 on p.17 of Cox et al.'s report).

Fourth, based on the programme of research, consultation and the reviewing process (see above) **we recommend the Victims' Commissioner should be empowered to recommend changes to the Code if it is found to be inadequate**. Cox et al. argue that, "as the body with primary responsibility for ensuring compliance with the Code the Victims' Commissioner should have a statutory role in ensuring that the Code continues to meet the needs of victims and witnesses" (p.38). At present there is no express duty on the Secretary of State to consult the Victims' Commissioner on changes to the Code. As the body with the best knowledge of its implementation, the Victims' Commissioner should be empowered to recommend changes to the Code to the Secretary of State and be consulted when changes are under consideration.

Cox et al. also recommend that the Victims' Commissioner is empowered **to publish an annual report directly to Parliament on the activities of the Victims' Commissioner and engagement of service providers with the Victims' Code.** The Victims' Commissioner produces an annual report, and both the 2019/20 and 2020/22 reports were laid before Parliament, but there is no statutory requirement to do so. This requirement to report directly to Parliament will better reflect the independence of the Victims' Commissioner from government, which becomes all the more important if the Victims' Commissioner is to have a stronger oversight role over the Code. As already noted, HMCICFRS reports annually to Parliament in this way.

Lastly, Cox et al., recommend that the Victims' Commissioner be given **explicit statutory power to recommend changes to the law.** They argue that giving the Victims' Commissioner this explicit power is a relatively minor change that would enhance her constitutional role and strengthen her ability to fulfil her duties.

Question 14: Are there any oversight mechanisms, measures or powers used in other sectors (for example by the CQC, Ofsted and FCA) which would be beneficial and appropriate to be used within the criminal justice system to ensure that victims receive a high-quality service?

There is some learning from other mechanisms: in particular, the setting of standards, use of rating scales in relation to those standards, and standardised publication of data.

The CQC is an executive non-departmental public body of the Department of Health and Social Care. It sets out standards of care, monitors and inspects against these and regulates ('Where we find poor care, we will use our powers to take action'). Within the Victims' Code, the standards for some of the rights are explicit (e.g. to inform victims of developments on their cases within a specific number of days), but sometimes the standards are less clear-cut. For example, Right 4 says, "You have the **Right** to be referred to services that support victims, which includes the **Right** to contact them directly, and to have your needs assessed so services and support can be tailored to meet your needs" (Victims' Code, p.1). However, as far as we know there are no published standards around needs assessment (though there are models that are commonly used) and it may be that one of the bodies in Figure 1 should be responsible for specifying, for the purpose of compliance and inspection.

The CQC produces a spreadsheet with ratings of around 8,000 care settings across 8 domains (e.g. Caring, Responsive, Effective, Well-led) rated on the same five-point scale from outstanding to inadequate that HMICFRS use. The scale used by Ofsted is the same, though it is four point, missing out 'adequate'. To us, this uniformity in approach underscores the value not only of a transparent set of ratings, but also of the scale used.

The CQC can use different types of civil enforcement action in order to achieve its dual purposes of protecting service users from harm and holding providers and individuals to account for failures in how services are provided. These include imposing, removing or varying conditions of registration; cancelling registration; urgent procedures; and special measures. There may be enforcement procedures that are relevant to the Victims' Code and/or to treatment of victims, for example, the Urgent Notification process, discussed at Q12.

Question 15: Would a more standardised and consistent approach to oversight, and to incentivising and supporting agencies in relation to delivery of a quality service for victims across the criminal justice system, be beneficial?

There is little doubt that a more standardised and consistent approach to oversight of how and how well victims' rights are delivered would be beneficial to victims, who currently receive a patchy service from the system. Recent from the Crime Survey for England and Wales (CSEW) data has indicated that victims are increasingly unhappy with the Criminal Justice Agencies, with 4 out of 10 respondents expressing dissatisfaction in the CJ agencies handling of their complaints. Sadly, too, we see from CSEW figures that those victims who are likely to be the most vulnerable have least confidence in the system: those aged 65 and over have the least confidence of all age groups that the CJS is fair or effective, and disabled people are far less confident than those who are not disabled (e.g. For example, just 41% of disabled victims are confident it is fair, compared to 57% for those who are not disabled – a statistically significant difference.) However, we know that there are many obstacles to achieving this more consistent and standardised approach to oversight, not least the lack of consistent national level data on victims: who they are, what rights they have been offered and received, their case outcomes and actions in relation to those outcomes (e.g. reasons for withdrawal) – see Q.9.

As discussed above (Q9 and Q10) we believe the appointment of local Independent Victims' Champions by PCC might be beneficial in supporting agencies in relation to delivering a quality service to victims. We would also like to see a statutory duty placed on agencies **to tell victims about the Code and publicise it.** Victims will only ask for their entitlements if they are aware of the Code, and this is an important way of holding agencies to account. Recommendation 21 in the Victims Law Policy Paper required that all listed agencies promote the Code and draw it to the attention of every victim.

A new monitoring and oversight system

The above questions outline the bare bones of a monitoring and oversight system, which will, we think, make agencies more accountable in relation to the Code and drive up service to victims. This is sketched out in Figure 1. In sum:

- PCCs are responsible for local level monitoring on a core set of metrics which agencies listed in the Code are legally obliged to produce. Independent Victims' Champions have a role in overseeing the collation of this data and driving up standards where actions are found wanting. The data is published.
- HMICFRS PEEL inspections and HMCPSI and HMIP inspections specifically rate Code compliance/delivery and a programme of thematic inspections of Code compliance is initiated, to be carried out jointly by the inspectorates. The Victims' Commissioner can request relevant inspectorates to inspect on aspects of Code compliance, if the Commissioner has particular concerns.
- The Victims' Commissioner produces an annual report on agency compliance with the Code, based on local level monitoring data, relevant inspectorate work on the Code, and other data provided on request. This is laid before Parliament. The Victims' Commissioner may make recommendations to change the Code. There is a statutory duty on agencies to respond to any recommendations about changes in policy or practice to better comply with the Code.

Question 16: What should the consequences be for significant failures in relation to delivering a quality service for victims, including complaints relating to the Victims' Code? Should those consequences be directed at criminal justice agencies as a whole and / or individuals responsible for the failure?

Researchers from the University of Nottingham have recently conducted some work in this area, looking at how to encourage take up of the Prison and Probation Ombudsman's (PPO's) recommendations in relation to deaths in custody. The report notes that PPO investigations produce and exacerbate vicious cycles of harm and blame across stakeholder groups, including, importantly, staff. The authors contend that seeking to fix individual staff practices in individual prisons only serves to blame staff and leave them despondent. The report concludes that the PPO needs to adopt a broader, systemic focus, examining the myriad of problems in prison that can heighten the likelihood of suicide. This research therefore seems to argue for an approach which recommends systemic changes, rather than pinpoints individual or organisational-level failings. We can see the merits of this argument, which certainly argues against imposing consequences on individuals responsible for the failure(s).

We have discussed the Urgent Notification system as a lever for specific change at various points above (see Q12 in particular). This may be one mechanism of redress which, being mindful of the findings above and so perhaps used sparingly, might yield benefits for victims. The power in itself may incentivise compliance with the Code.

However, another powerful remedial action that agencies could take is to be required to issue an apology where culpability it is found following a complaint. We find that an acknowledgement of a mistake and apology can be a powerful thing for a victim.

Question 17: What do you consider to be the best ways for ensuring that victims' voices, including those of children and young people, are heard by criminal justice agencies?

Question 18a: What data should criminal justice agencies collect about victims' experiences, and at what key points in the process?

Question 18b: Can you provide any examples – in the UK or elsewhere – of this being done effectively?

Question 19: How might victims provide immediate feedback on the service they receive and its quality (such as text message, online surveys etc.)?

Ensuring a strategic response to collecting victims' views

Gathering and responding to service-user feedback is essential for any healthy organisation. This is particularly important for the criminal justice system, which has an acute and ongoing impact on the lives of victims. **Regular, strategic and systematic feedback is essential for providing victims with a voice, highlighting strengths and weaknesses and correcting problems.**

In order to achieve this, all agencies within the criminal justice system should have a research strategy for collecting and responding to victim feedback. This should normally include a range of methodologies that proactively collect both qualitative and quantitative data including, as a minimum, victim satisfaction at key points in the system and measures of compliance with the Victims' Code. Several criminal justice agencies, such as Police and Crime Commissioners, have requirements to consult. This should be expanded across all agencies listed in the Victims' Code to ensure a duty to consult with victims.

Partnerships, such as Local Criminal Justice Boards, should consider developing joint strategies that avoid duplication and reduce costs whilst providing a broader range of data across organisations.

Any strategic view of victim research should include targeted exercises to specific samples (e.g. on a particular topic). It should also consider universal consultation techniques such as exit questions.

All agencies within the criminal justice system should have a research strategy for collecting and responding to victim feedback.

Correct methodology

Victims have diverse needs and any work to consult victims must recognise and respond to this. Furthermore, different methodologies have different strengths and a mixed methodology, considered within a research strategy, will bring the strongest results.

Large scale quantitative research will bring data from large numbers of people are able to measure key variables such as levels of levels of satisfaction, whether victims felt kept informed and whether victims recall be offered their rights such as Victim Personal Statements. They should also include questions that are particularly important to victims, for example:

- I felt believed/ taken seriously.
- I was treated with respect.
- Communication was regular, sensitively delivered easy to understand.

Where methodology and questions are consistent, this research can enable comparisons across different areas, highlighting good practice which can be used to identify and support areas with weaker performance. The government should consider setting standards for this research to ensure that they target appropriate samples of victims to deliver a representative response. We have heard concerns from academics that the previous large-scale WAVE survey excluded victims who were less likely to be satisfied such as victims of domestic abuse.

In contrast, qualitative consultation enables victims to discuss their experience in depth, deliver rich data and consider complex questions. This data is extremely valuable and must be included in research strategies.

Every research strategy must recognise and respond to the Public Sector Equality Duty. It must recognise which groups are usually excluded and should ensure that it include methodologies overcome this. This must include practical considerations such as interpreters and ensuring accessibility. It should also consider how to recruit respondents and is likely to require consultations that are designed with the needs of victims in mind e.g. location, attendees, facilitator.

There is literature available from agencies such as Save the Children that provide a toolkit and principles for engaging with children. Other bodies consider the ethics and practicalities of consulting with children including the Market Research Society. These principles can be applied to criminal justice agencies.

Effective research strategies must have an appropriate mix of research methodologies. All methodologies must consider the specific needs of victims and must be trauma-informed in their design and execution and must conform to key ethical standards. They should include referral to support services following the consultations as needed.

Correct geography and sampling

It is important to ensure the victim consultation is positioned appropriately. For example, where large scale surveys take place, they should have a sufficient sample to enable analysis by relevant geographical area e.g. police force area. Samples must be as representative as possible.

Criminal justice agencies should consider where should conduct their own consultations and where they should join in partnership. For example, scrutiny sessions where members of the public dip check and report on performance are likely to be run be a single agency. In contrast, agencies may wish to consult in partnership on cross-agency issues where the victim is unlikely to be any to distinguish between one agency and another. For example, responding to complex crimes such as domestic abuse.

Regularity

Criminal justice agencies must consider the timing and regularity of consultation and include this within their research strategies.

Including usually excluded groups

It is crucial to include all groups in society in order to understand who accesses services, who faces barriers to services and, ultimately, how to overcome these so that all victims receive their Victims' Codes rights.

We have heard from usually excluded groups who have pointed to a lack of accessible engagement methods from public services. For example, we have been told consultations for the Domestic Abuse Bill were much less accessible for many disabled victims. We

understand that British Sign Language formats being made available much later than other consultation documents, meaning a considerably shorter response period for those relying on that format. We also understand that organisations representing disabled victims were invited to qualitative consultations that considered disability rather than broader topics.

The result of this is that individuals and organisations representing usually excluded groups face additional barriers in ensuring their voices are heard. This requires additional work, time and stress to respond.

We recommend that public agencies engage and consult with victims from usually excluded groups in order to ensure that their consultation and engagement is accessible and acknowledges the experiences of all victims.

Practice to learn from

Large scale surveys

There are a range of large-scale public service surveys that provide an example of the benefits of surveying service users and comparing data across areas. The Witness and Victim Experience (WAVE) Survey is an example of survey a survey in this area. However, there are similar examples across government such as the Best Value User Satisfaction Surveys that took place in local government every three years. These surveys enable large scale data collection that provides a benchmark for performance, measures this across different years and allows for comparisons. This, in turn, can highlight areas of good performance for others to learn from as well as poor performance where targeted action is needed.

Effective scrutiny panels

There are a number of examples where local scrutiny panels take place, often dip checking and commenting on specific cases. The quality of these panels can vary. Stakeholders have reported examples where scrutiny panels that involved cross-agency working and delivered good outcomes for victims e.g. reviewing and improving standard communications with victims.

However, we are also aware of examples where participants felt that panels were a 'sham' either because they were not conducted with enough frequency, participants were not provided with enough information or where they felt that they were not listened to. It is important that agencies, such as the CPS demonstrate that they use these panels and respond to feedback.

Furthermore, scrutiny panels must ensure that they have representatives across different communities to ensure a wide range of experiences and views are reflected. They must also ensure that they recruit members with the right expertise to advise.

Immediate feedback

There are examples of public bodies asking for immediate feedback from those that have used their services. For example, the NHS friends and family test asks patients for feedback when they are discharged from a service. This is then analysed, acted upon and reflected in 'you said, we did' communications. Similar consultation can take place throughout the criminal justice system.

Victims Panel and consultation with victims' representatives

Consulting with victims' representatives is an effective part of understanding victim feedback and needs. The Ministry of Justice has previously run meetings of its Victims' Panel. This comprised experts and those with lived experience and advised and assisted the Ministry of Justice in its aim to support victims. However, the Panel has not met regularly, leaving some

members telling us that they have felt badly treated. The Ministry of Justice should seek to re-establish these meetings and this model can be used by other criminal justice agencies.

Panels must include representatives from those who are usually excluded from such consultations and representatives must be facilitated to attend. For example, where 'by and for' services will be invited to attend panels, they must be funded to do so. The design of Panel methodologies must also be accessible for usually excluded groups.

Wider data collection requirements
The Victims' Law Policy Paper outlines requirements for better data collection.

Victim demographic data
Better compliance with the Victims' Code can only be achieved through the capture of victim data. Currently, most criminal justice system agencies do not systematically collect data on victims. We don't know who is in the system at any one time, and we don't know the extent to which they are receiving their entitlements under the Code. For example, to the best of our knowledge, we have no way of knowing how many vulnerable victims (e.g. children and young people under 18) are in the system or in different parts of the system at any one time. This point was raised by a number of our stakeholders.

Furthermore, stakeholders pointed out that poor data collection had hampered other efforts to achieve scrutiny and embed a victims' voice. For example, one stakeholder told us that a scrutiny panel she had joined could not identify cases for male victims because this data could not be identified in the cases studies they were provided.

It is almost inconceivable to think this would be the case for defendants or offenders: that we would not know, for example, how many offenders were under 18 at the time they committed a crime. However, about victims, who we would argue have hugely strong interest in the criminal justice process, we can currently say almost nothing.

In order to monitor Code compliance, we first need to know who our victims are – basic information like which crimes they have been a victim of, their ages, gender and other protected characteristics, and whether they have been a victim before. Then we need to be able to link this to whether these individuals have been offered and received their entitlements under the Code through a centralised management information system across agencies, or within agency systems collating directly comparable data. The response to question nine discusses this further and links to a suggested table of data to be collected.

Data on whether victims are receiving the entitlements they are due
Attendees at the Victims' Law roundtables repeatedly raised the important need for improved collection of monitoring data on service level provision of Code rights and related equalities information about victims and witnesses. We need to know from criminal justice agencies whether entitlements are being offered and delivered.

The Victims Strategy, published in September 2018, made a commitment to hold agencies to account for compliance with the Victims' Code through improved reporting, monitoring and transparency. Other than the decision to devolve responsibility to Police and Crime Commissioners as from April 2019, it is not clear what further progress has been made.

Recent attempts to measure Code compliance have demonstrated the limitations of the information collected by statutory agencies and service level providers at a national and local level on management information systems.

- In 2015, the Office of the Victims' Commissioner and Ministry of Justice sent a questionnaire to agencies and found compliance monitoring varied greatly between agencies.
- Currently, there are several large data projects underway across the criminal justice system. These do not have a significant focus on victims or Code data.
- Our recent review of special measures shows very limited collection of national information about volumes of vulnerable victims or provision of special measures in courts.

Each of these examples suggest insufficiency of current data collection about Code compliance equalities information.

An independent report recently published by the Victims' Commissioner has made similar recommendations. Our 'Constitutional Powers' report recommended, and we now recommend:

That a revised Code establishes protocols for data collection on Code compliance by named agencies.

If a statutory obligation is placed on public bodies named in the Code to provide access to data and information, that does not necessitate that those agencies collect information of sufficient quality or standardisation to facilitate effective review of Code compliance. First, the data needs to be collected in a standardised, analysable format. Secondly, these data need to centrally collated and scrutinised

We therefore recommend:

- **A duty on listed agencies to collect information about individual victims.**
- **A duty on the Ministry of Justice to produce statutory guidance about what information should be collected about individual victims, including information on protected characteristics and the provision and receipt of Victims' Code rights.**

Data collection and victims' services

Our response to chapter three considers the demands placed on commissioned victim support services, including smaller 'by and for' organisations. It is important to note that any data collection requirements are not unduly onerous on these organisations. We hear concerns that the data already requested for monitoring and evaluation is onerous and disproportionate to the size of grant they have been awarded. **We strongly recommend that requests for data from these services should be limited and, to some extent, standardised.**

Listening to victims' voices at inquests

The criminal justice system can all too often focus on process and lose sight of the human element of a case. This is why we have pressed hard to ensure all victims are made aware of their right to make a Victim Personal Statement (VPS) following a conviction. The VPS is the only part of the process where the victim's voice is heard in describing the impact of the crime. The opportunity to make a VPS can offer some catharsis to victims and help them in their recovery.

Pen portraits can have a similar effect at inquests, particularly in large-scale tragedies where there is a fear that individual victims become a case number. An inquest can be protracted, intrusive and distressing. A pen portrait can help humanise the inquest process. Families involved in the Hillsborough inquest made this point to the subsequent review undertaken by Rt Rev Bishop Jones. He concluded: "The use of pen portraits at the fresh Hillsborough

inquests helped to put the families at the heart of the proceedings. The process was vital in humanising the inquest and was both important and therapeutic for the bereaved families. In my view the use of pen portraits is an important point of learning. And the Chief Coroner should ensure that families are offered the opportunity to read a pen portrait of their loved one into proceedings at all inquests."

For this reason, we have discussed the use of pen portraits with charities who support victims of homicide. At our roundtable of these charities as part of our wider stakeholder engagement exercise, there was unanimous support for the suggestion that bereaved families following a violent death should be entitled to submit either in writing or orally a pen portrait of their loved one to an inquest. This is consistent with the view that victims are perceived as participants in the process and is a recognition that any inquiry can only be as effective as its participants, as discussed in our response to chapter one. Pen portraits encourage and enable full participation of the bereaved in the whole inquiry process and will harness their positive contribution to the quality and credibility of its outcome.

We recommend that bereaved families who have lost a loved one to a violent death to have the right to present a pen-picture of the deceased at inquest hearings.

Representation at inquests

Bereaved victims who have lost a loved one and where a public body's accountability will be tested at inquest do not have automatic access to legal aid or other legal funding to be represented at the hearing. This was an issue discussed at length at our stakeholder roundtable for those supporting bereaved victims of homicide. In current coronial proceedings, unless they can afford to instruct a lawyer, the family members are reduced to bystanders, beholden to the coroner to ask questions they wish asked on their behalf, should the coroner agree to do so. This has been a cause of concern in several high-profile cases, including the first inquest in relation to the Hillsborough tragedy and more recently inquests following terror attacks.

Although inquests are intended to be inquisitorial not adversarial in concept, they become an arena where the accountability of the public body in question is tested. State bodies instruct legal teams and are unrestricted in the rates and quantum of funding and the level of representation.

As taxpayers, these families are likely to be contributing to funding the public bodies who may be responsible for their loved ones' death, yet they are being denied public funding for representation for themselves. We are committed to ensuring that, in particular, victims of crime are given every assistance to 'cope and recover' from what has happened to them. This is the overarching aim to which governments over many years have committed funding for victims' support services and which they have set out in the statutory Victims' Code of Practice, the Victims Strategy and which is expected to be a central tenet of the proposed Victims Law. In order to cope and where possible, recover from the death of a loved one, it is well established that the bereaved need to know and to understand how their loved one met their death and to have all their questions answered and their doubts met.

By recognising families as 'interested parties' as the law does, there is a clear intention to allow them to participate. Our rapid evidence assessment, "What Works for Victims" found that procedural justice – involving being treated with decency and concern, appraised of all relevant developments, furnished with information, given skilled and professional support and allowing the fullest engagement possible in proceedings – is a key part of the restoration process required for the cope and recovery of a victim of crime. **We are therefore calling for automatic, non-means tested public funding to be made available to bereaved families for legal help and at inquests at which a public authority, or private body fulfilling public functions, is to be legal represented.**

Question 20: How do you think we could simplify the existing complaints processes to make them more transparent and easier for victims to use? How could we secure a swifter resolution while allowing for a more consistent approach?

The Victims' Code includes the entitlement to "make a complaint if you do not receive information and services you are entitled to, and to receive a full response from the relevant service provider." However, the complaints process has been described as being an ineffective and inadequate mechanism for victims of crime, and described as "inaccessible, long, overly complex and does not provide sufficient guarantees of privacy and objectivity [or] adequate redress and remedies for victims when service providers breach their duties"(Manikis, 2012, p.149). The Victims' Commissioner reviewed the complaints systems of criminal justice agencies in 2015 and found that victims found it difficult because they did not know who to make the complaint to, how to make their complaint, or how to secure help when the needed it. The victims' services sector tells us that this is still the case and criminal justice agencies need to communicate their complaints procedures more clearly and effectively.

Victims of crime are required to address their complaints to the relevant individual Criminal Justice agency. Some victims may have complaints that straddle more than one agency. Each agency has its own multi-level complaint mechanism.

CPS

In order to complain, victims must:

- Contact their local CPS Area or the member of staff involved who will try to resolve the matter.
- If they remain dissatisfied, they can make a formal complaint, either a legal complaint or a service complaint, in writing. This will be managed via a three-stage process:
- **Stage One:** formally recorded and managed by the local CPS Area who will look into the complaint and reply within 20 working days. Where it is not possible to complete the investigation, and provide a response within that timeframe, they will write to the complainant stating the date by which we hope to reply.
- **Stage Two:** If dissatisfied, the complainant must escalate they complaint within one month of reply with details of why they remain dissatisfied. A senior manager will review the complaint and respond within 20 working days. Where it is not possible to complete the investigation and provide a response within that timeframe, they will write to the complainant providing the date by which they hope to reply. This will be the end of the process for complaints relating to legal decisions.
- **Stage Three** Complaint refers to the way in which they have conducted themselves (a service complaint), and dissatisfied following Stages One and Two, the complainant can refer to the Independent Assessor of Complaints (IAC) within one month of the Stage Two reply. The IAC operates independently from the CPS and is responsible for reviewing complaints from members of the public in relation to the quality of the service provided by the CPS and their adherence to their published complaints procedure.

Police

- The police complaints system, as recognised by Parliament, is complex with a number of agencies involved in resolving complaints.
- Most complaints will be handled by the police force. Police forces are expected to deal with complaints in a reasonable and proportionate way. They may provide an explanation, apology or other information. They may also carry out an investigation into the complaint. Where a police force handles the complaint, they must write to the complainant to tell them the outcome and explain whether the complainant can request a review or appeal.

- Some complaints must be referred to the Independent Office for Police Conduct (IOPC). Police forces must refer most serious incidents to the IOPC, such as a member of the public being seriously injured of dying, whether a complaint is made or not. Police forces can also refer incidents to the IOPC if they have concerns, for example, on the conduct of their officers or staff.
- Police and Crime Commissioners / Mayors handle complaints concerning their chief officer.
- PCCs and Mayors also undertake complaint reviews, in some circumstances, when the complainant is unhappy with the way the relevant police force handled the complaint or is unhappy with the final outcome.

Courts and Judiciary

- Complaints relating to the handling of the administration of a case or the court buildings and facilities are made to HM Courts and Tribunals Service.
- Complaints about the conduct of Judges are made to the Judicial Conduct Investigations Office.

Ombudsman

- If victims are unhappy with the outcome of any of these agencies internal complaints systems they can refer their complaint to the Parliamentary and Health Service Ombudsman. However, to do this they must gain the support from their MP.

Therefore, the complaints service includes multiple agencies that need to be negotiated in order for victims to make a complaint and it may well be the case, that the victim, looking from the outside in, simply does not know which agency is responsible for the perceived failing. There is no single point of contact for victims to access the system. The process is laborious, complex and not suited to complaints relating to the Victims' Code.

Complaints from victims are a key aspect to understanding how service providers are implementing and complying with the Victims' Code. The **Victims' Commissioner'**s Victims' Law Policy Paper made a number of recommendations relevant to this question. It noted that to make the complaints system easier for victims to navigate, **a single complaints process for Victims Code breaches is desirable**. The victim may well not know which agency their complaint is best directed to (e.g. the police or the CPS?). There is therefore a confusing array of avenues of complaint that victims must currently negotiate if they are dissatisfied.

In Figure 1, above, we have set out **our recommendation for a specific complaints process for breaches of the Victims' Code.** These should go to the PCC Independent Victims' Champion who would be tasked with the quick resolution of complaints where possible. For example, the Victims' Champion would intervene to ensure that a victim who has been denied an interpreter receives one. If this were not delivered by the relevant criminal justice agency the Victims' Champion would refer the complaint to the PHSO.

Currently the Parliamentary and Health Service Ombudsman exists only as a further avenue of redress for victims dissatisfied with the outcome of their initial complaint to the various agencies. **We recommend removing the requirement to engage the support of an MP to be able to make a complaint to the PHSO, for both Code specific complaints and all other complaints relating to criminal justice agencies.** This would make the service far more accessible to victims. The PHSO received, for the year ending 2020/2021, 5,330 complaints. Of these complaints, just 29 were made about the police.
The suggestion to remove the MP filter is in line with the PHSO's own thinking inn their 2020-2021 Annual Report.

Question 21: What more can be done to improve oversight of complaints handling, including where victims are dissatisfied with the outcome of the complaint process?

Complaints about breaches of the Code should go initially to the Independent Victims' Champions, at the local level and then to the PHSO. This would provide improved oversight of the handling of all complaints and failures in compliance with the Code. The Victims' Champion would be the investigating body in relation to initial complaints relating to breaches of the Code. The PHSO, as ombudsman, would be the second tier and as now investigate situations where a criminal justice agency's complaints process was found to be wanting.

Question 22: What more might agencies do to embed complaints relating to the Victims' Code into their operational and performance management processes?

We have suggested a separate complaints system for breaches of the Victims' Code, which sits outside of each CJS agency. Analysis of the number of complaints and complaint resolution of both kinds of complaint should be part of the monitoring process and inspection regime. It must also be part of the Victims' Commissioner's reporting to Parliament.

Chapter 3 – Supporting victims of crime

Question 23a: What legislative duties placed on local bodies to improve collaboration where multiple groups are involved (such as those set out above) have worked well, and why?

Question 23b: What are the risks or potential downsides of such duties?

In this chapter the government is considering the complexities of commissioning and is right to draw learning from the effectiveness of legislative duties put onto local bodies for related purposes such as the ones referred to - MAPPA and crime and disorder reduction partnerships. **It is important to recognise that in this consultation about a 'Victims' Law' this is the only chapter dedicated to the majority of victims of sexual violence, domestic abuse and other 'violence against women and girls' crimes, because the majority never report to the police and thus do not interact with the criminal justice system. It is of paramount importance that government gets the commissioning of services right as this is the area the affects the majority of victims.**

We are in favour of statutory duties on relevant public bodies (PCCs, health bodies and local authorities) to ensure the provision of community-based services, we do however envisage some issues with duties if they are poorly designed. To help mitigate this it is vital that the specialist sectors are involved in designing any duties.

We are in favour of commissioning duties on local commissioners

The commissioning landscape is highly complex, there are multiple commissioning bodies sometimes with overlapping responsibilities, different budgets, covering different geographical areas, with different timescales and different political priorities. In some victims' support sectors there is both direct centralised government funding and devolved funding. Commissioning anything within this environment is intrinsically difficult to achieve. It needs leadership, buy in and shared goals. Ultimately, all of these can be undone by one bad relationship or a few bad meetings. This must be recognised and there needs to be central government commitment to removing barriers and unequivocally driving partnership working. This is far more complex than the co-operative working required by MAPPA or the partnerships referenced above, and we are clear and strongly recommend that only a formal statutory duty will suffice. We know from stakeholders that non-statutory partnerships such as MARAC have varying levels of 'buy-in' at different local authorities and within geographical areas and have been considered, we feel rightly, for implementation in statute to ensure consistent service to victims of domestic abuse.

Specifically, the government has committed to explore the provision of community-based domestic abuse and sexual violence services to transform the support landscape. Chapter three refers to these services including advice services, advocacy services and recovery and support work.

The government has said that this will set expectations for the standard and availability of support for victims of domestic abuse and sexual violence. This will complement the existing duty for tier one local authorities to deliver support to victims of domestic abuse and their children in safe accommodation. It is crucial to ensure that a statutory duty is introduced on local authorities and other relevant commissioners to fund community-based services for victims of domestic abuse.

Local authorities already have responsibility to deliver accommodation services and, without a similar duty for community-based services, there is a serious, indeed almost inevitable risk of two-tier system that leaves victims without appropriate support including Independent Domestic Violence Advisers (IDVA) services.

Refuge accommodation is hugely important, but the majority of victims stay in the home and access community-based services such as IDVAs. All victims of domestic abuse need to have access to local protection and support in their own communities.

What is clear and is widely accepted is that demand currently outstrips supply, victims are subject to a postcode lottery in accessing support with devolved funding exacerbating this problem. That there are often 'political' factors at play in commissioners' decision making is a further reason why only statutory requirements can deliver the comprehensiveness required. Government should also not lose sight of the fact that the majority of victims do not engage with the criminal justice system (CJS), this especially being so for all victims of Violence Against Women and Girls (VAWG) offences and so funding often being intrinsically linked to the CJS can mean the commissioners favour services which 'support/ assist the CJS such as Sexual Assault Referral Centres (SARCS) or Independent Sexual Violence Advisers (ISVAs) and IDVAs (see answers to questions related to Chapter 4) over the services which the majority of victims need or want for their recovery outside the CJS.

We note that government was satisfied that only a statutory duty would suffice in ensuring joint working at local level in tackling serious violence as they have included one in the Police, Crime, Sentencing and Courts Bill.

Any duties must be designed to recognise and respond to the realities on the ground and invest in capability and capacity of commissioners to come together. Whilst legislation is needed to drive better collaboration, it is always preferable that this is based on shared aims rather than forced partnership working. There also needs to be an agreed procurement process and leadership that encourages grants.

We would strongly suggest that The 'National Statement of Expectations' attached to the 'Violence against Women and Girls (VAWG) Strategy 2016 to 2020' is a good example of principles which could become duties, designed with the VAWG sector and widely considered to be robust and victim-centred, these were frustrated by a complete lack of enforceability. If not used as a basis for 'duties' on commissioners, then in any event the National Statement of Expectations which is currently being revised should be placed on a statutory footing. Any duties on commissioners must 'have teeth' without which they are meaningless.

We strongly recommend duties on public bodies to commission community-based services.

We recommend that the National Statement of Expectations is placed on a statutory footing.

Potential risks to be mitigated in any duties

Generic 'tick box' services

One significant potential downside of statutory duties is that they can, if poorly designed, lead to a 'tick box' approach, where commissioners attempt to meet their obligation in a manner which does not necessarily meet the needs of victims in the right way. There are always budgetary considerations at work, and it can be tempting for commissioners to fund providers who are able to 'support' higher volumes of victims at a lower cost, however much work with victims requires high levels of specialism. Truly trauma-informed work is hard to achieve at scale.

It is sometimes the case that commissioners have a poor understanding of how different organisations work with victims and as such any duties must also have clear definitions around minimum expectations for commissioning. For example, many Police and Crime

Commissioners (PCCs) may state they commission a sexual violence service when they in fact commission a SARC, which whilst it may provide a counselling service, will not usually provide the same level of wrap-around victim-centred service as a Rape Crisis centre. It may be of interest that the Victims' Commissioner herself recalls a conversation, when she was a PCC, with the leader of a local authority who believed they were discussing a refuge when they were discussing a Rape Crisis Centre.

Avoiding Confusion 'on the ground'

We have recently heard that local authorities who are not experts in domestic abuse or serious violence have due to the Domestic Abuse Act been asked to comply with the accommodation- based services duty. They anticipate a serious violence prevention duty arising from the Police, Crime, Sentencing and Courts Bill and may of course soon have to comply with duties arising from the Victim's Law as well. These duties will have a degree of overlap and the piecemeal nature of them is potentially confusing on the ground. As such there needs to be very clear guidance to accompany any duties, ideally incorporating all the duties under thematic headings such as domestic abuse to ensure clarity. These should clearly outline expectations around things like commissioning 'by and for' services or services for men (see below). It is also important that any new duties are accompanied by a clear communications campaign to engage local authorities so they can keep abreast of their changing obligations.

We strongly recommend that government provides clear guidance and communications to public bodies around the new duties which includes clear expectations around the nature of services that should be commissioned for example how by and for services should be commissioned.

Dis-jointed/ fragmented and short-term funding

Government needs to ensure that it leads the way by bringing funding together by area rather than fragmenting it across departments with different deadlines for grants. We would strongly recommend that funding is brought together under support 'themes'. This should include ring-fenced funding for specialist 'by and for' provision.

There is also a significant issue for many organisations who provide therapeutic and advocacy services when funding for posts is of a short-term nature (1-3 years) as they can struggle to recruit professionals into such a short-term role. For many the uncertainty around continues employment/ income will be off putting. Central government should set an example here to local commissioners by ensuring they do not offer short-term funding of such roles (see also chapter 4).

We recommend that government leads by example in bringing funding together thematically.

Funding services with a proven track record not insisting on innovation

We would also strongly recommend a move away from the repetitive focus on innovation in favour of absolute clarity that services cannot work as we all require them to do unless they have funding for their core service requirements. The government needs to lead by example here. Otherwise agencies are under huge pressure to come up with new ideas, take part in evaluations etc. when they can't get funding to pay for core activities which have been shown over years and are fully accepted by government to be what service users need.

We recommend that government encourages commissioning of services with a proven track record instead of pushing innovation.

Learning from other duties

Policy-makers who were involved in drafting the accommodation-based duty as part of the Domestic Abuse (DA) Act will of course have some learning which could be applied here.

We know that many in the DA sector were concerned about the way in which accommodation is defined as part of that duty. They also shared concerns about ostensibly community-based services attached to refuge services which were not included. Any duty should be co-designed with the relevant sector.

We strongly recommend that any duties are co-designed with the relevant specialist sector(s) especially those involved in providing 'by and for' services.

'Invisible' victims

This is discussed further in other questions but there are groups of victims who are less 'seen', these include disabled victims especially learning -disabled victims, migrant victims, adult victims of child sexual abuse, older victims, and incidental or collateral victims who are not recognised as such in their own right such as the parents or siblings of children who have experienced child sexual abuse. It is important that these victims are made more visible and are able to access support.

We recommend that government encourages commissioners to cater for more victims by helping to make those most marginalised more visible.

The 'by and for' sector

There are considerable issues in commissioning of the 'by and for' sector and these will be addressed further in questions 26 and 27, save that where there are commissioning tenders which insist on collaboration amongst organisations the inequality of resource between bigger more generic victims' services and small specialist 'by and for' services can result in very inequitable 'collaborations' which leave the specialist services under-remunerated and further under-resourced. This could be addressed if carefully considered at the drafting stages of any duties.

Imkaan outline how current commissioning processes fail black and minoritised ending VAWG organisations because they:

- *Privilege larger, more well-resourced providers e.g. short timelines, complex tenders, excluding criteria such as large turnovers*
- *Do not adequately embed equalities e.g. structured to favour bidders who can provide support at lower costs and have a larger reach in terms of numbers, therefore local BME 'by and for' providers are always at a disadvantage. OR*
- *Do not allow for meaningful intersectional work across diverse identities and/or strands of VAWG e.g. many BME providers work across the VAWG spectrum addressing issues such as domestic violence, child sexual exploitation, forced marriage and honour-based violence as a routine part of their case-work. Yet commissioning frameworks do not reflect this.*
- *Fail to recognise the added value/resources that BME by and for providers bring. This carries no weight in a tender process. Funders rarely pay for or recognise the 'added value' and/or social value e.g. in-house translation/interpreting, knowledge and expertise on a broader range of VAWG strands, expertise in working across complex extended family systems and international community networks, life skills and orientation support for survivors who may have recently arrived in the UK, ethno-cultural community links and expertise, and critical contributions to equality-proofing local and national strategies.*
- *Force providers into partnerships and consortia arrangements where BME organisations are often under-resourced, silenced, marginalised or 'squeezed out'.*
- Focus on quantitative rather than qualitative results. When quality is assessed, the monitoring mechanisms are not designed to capture the nuanced way in which organisations are delivering specialist support across the protected characteristics.

These problems should be factored into and mitigated in the design of any duties and specialist by and for organisations should be involved in co-designing the duties.

We strongly recommend that the difficulties faced by specialist by and for organisations are mitigated in the design of any duties.

Question 24: What works in terms of the current commissioning landscape, both nationally and locally, for support services for victims of:

a) domestic abuse

b) sexual violence (including child sexual abuse)

c) other serious violence?

Question 25: How could the commissioning landscape be better brought together to encourage and improve partnership working and holistic delivery of victim services for:

a) all victims of domestic abuse

b) all victims of sexual violence

c) all victims of other serious violence

d) children and young people who are victims of these crimes?

We believe that we can answer these questions better together. Commissioning currently works best where there is a degree of co-production between commissioners and services and where there is national guidance, which if followed helps to ensure commissioning is better tailored to service areas. The commissioning landscape could be more cohesive if there was better joining up between commissioners including consideration of regional pots of money and ensuring that Clinical Commissioning Groups / Integrated Care Systems are also obliged to fund services dealing with complex trauma.

<u>The importance of long-term sustainable funding that covers 'backroom' costs</u>
In addition to proposed statutory duties there needs to be government commitment to long term sustainable funding. Including ring-fenced funding for specialist 'by and for' organisations. We are very strongly of the view that the short-term nature of much funding is counter-productive and can create damaging real workforce issues including trouble retaining staff, difficulties in long-term service planning and reduced opportunities for further development of services. Funding should also be, at least in part, unrestricted to provide a degree of flexibility, the need for this was well demonstrated by the unexpected pressures of the pandemic.

Some types of support service should arguably be commissioned at a national level which would help to ensure less of a 'postcode lottery'. The rape support fund has helped to transform the landscape in sexual violence commissioning but there is no equivalent fund in health for sexual violence services – see below question 28.

In this national commissioning arena, government should provide leadership in supporting existing core services over the longer term, rather than constantly seeking innovation. Government should also require commissioners to fund core costs such as administrative costs and to take real note of the need for vital clinical supervision for those workers who are at risk of vicarious trauma and burn-out. Currently clinical supervision is thin on the ground and usually scraped from resource intended for service delivery.

We do not address in detail here the issues around commissioning of ISVAs, IDVAs or other advocates as this is the subject of Chapter 4 of the consultation.

We strongly recommend that government provides long-term sustainable funding for services, including 'back-room' costs and ring-fences funding for specialist by and for services.

Measuring outcomes

Measurement of outcomes must align with data that providers already collect. We hear concerns that data currently requested for monitoring and evaluation is onerous for small organisations and often disproportionate to the size of the grant. There are often similar demands for data but required in different form. We strongly recommend that requests for data should be limited and standardised to some extent.

We strongly recommend both quantitative and qualitative outcomes need to be victim-focused, looking at their individual recovery rather than numbers of victims supported/entering and exiting the system. The holistic nature of supporting victims must be considered. While some standardisation of reporting outcomes is welcome, it is vital that there is flexibility within these and that the highly specific nature of for example VAWG is taken into consideration, ideally metrics should be co-produced with the specialist VAWG sector and survivors.

We strongly recommend that government provide guidance to commissioners that both quantitative and qualitative outcomes need to be victim-focused, looking at their individual recovery rather than numbers of victims supported/entering and exiting the system.

Importance of Specialism and what survivors want

One of the key points here is that specialism is absolutely vital for services working with people who have experienced sexual violence, domestic abuse and other 'interpersonal' crime types. We hear from national umbrella organisations such as Rape Crisis England and Wales and Women's Aid that survivors in general do not report positive experiences of generic services, many find interactions can cause further trauma.

Most survivors want individualised, holistic, and on-going services for as long as they need the support. They want services to be properly funded so that they do not have to deal with inconsistency of service or changes in personnel.

They want 'experts' helping them and for many it is imperative that they feel the service caters for their personal characteristics and/or understands their cultural or social needs. More on that below.

We strongly recommend that government encourages specialism in guidance accompanying any duties.

Excessive focus on criminal justice interventions in commissioning

Related to the above and touched on in answer to question 23, we have heard that the focus on funding perceived criminal justice interventions such as ISVAs and SARCs can leave some other forms of support relatively poorly funded. This is even though they are absolutely key for the majority of victims of sexual violence and domestic abuse who do not engage with the criminal justice system.

It also misunderstands how for example the role of the ISVA or IDVA works symbiotically with therapeutic services or more generic advocacy services (providing help with housing, health etc.)

This reflects the type of holistic support that many survivors want and need.

It is vital that these other types of support are funded too.

We strongly recommend that government include all forms of support in its' funding strategy and centralised funding and does not focus exclusively on CJS interventions.

We also recommend that guidance accompanying ant duties makes clear the commissioners must commission other services in addition to CJS interventions.

Gender inclusive services versus gender segregated services and the importance of choice
It is vital that any duties are underpinned by principles of equality and inclusion, both in provision of services and reporting of data for those with protected characteristics.

Of some concern to the specialist sector is the increasing move towards the de-gendering of services, or put another way, insistence on gender inclusive services. For example, it is recognised that sexual violence is a gendered phenomenon, the drivers for and impacts of sexual violence are different for male, female and non-binary individuals. Many bigger organisations have moved from other types of victim support work into the highly specialised area of VAWG, but they often lack a gendered analysis. Whilst their more generic approach may work for some victims, the majority of victims require specialist support which includes an understanding of how intersecting aspects of their identity impact on their experience of trauma.

Nearly all specialist sector organisations whether supporting men, women, boys or girls are clear that a gendered analysis is a vital part of trauma -informed work. The government are in the process of commissioning a non-gendered 24-hour sexual violence helpline. We strongly recommend that any perceived need for longer hours for sexual violence helplines is firstly checked against available data which we believe does not demonstrate a need. Secondly, if nonetheless a 24-hour phone support is required by government that it should be achieved by funding to supplement the hours operated by the current helpline providers who all work on the basis of a gendered analysis.

We are told that men who have experienced sexual violence or domestic abuse frequently want a service which is just for them as they feel that a gender inclusive service may be too 'feminised' or may perceive it as 'for women only' because these are viewed as VAWG crimes. It is important that government leads the way in encouraging commissioners to think about the extent to which they cater for men and boys. A good start would be a men and boys interpersonal violence strategy.

Having consulted stakeholders we heard that the appropriate and needed central government push to tackle VAWG without any central strategic approach towards men experiencing interpersonal violence can leave services for men and male victims feeling excluded.

We were given this example by a men and boys service which illustrates the issue:

The following statement is one of five objectives from a PCC police and crime plan.

- Women and girls are protected from violence, vulnerable people are safeguarded and there is a sustained reduction in the numbers of people killed and seriously injured on our roads.

The service provider felt this is problematic because it doesn't recognise that males also need protection from violence and as a public statement potentially marginalises male survivors.

It was also an 'aim' of a commission tender which the service would like to bid for, essentially it means that they have to demonstrate how their project protects women from violence.

There must be consideration of the needs of men and boys who experience interpersonal crime, and we recommend a central government strategy which would set a clear expectation.

This relates to another point in policy terms 'trauma-informed' is now used frequently to describe how statutory services should behave and is often used in commissioning such as the above-mentioned 24-hour helpline. Unfortunately, there does not seem to be a consistent definition of 'trauma- informed' and this creates confusion and means that the service that victims receive will vary significantly because services use different definitions of this and interpret it differently. It would be extremely useful if government in consultation with specialists defined 'trauma-informed' so that all agencies are using the same definition.

It is vital that statutory services dealing with victims of sexual violence, domestic abuse, so-called honour -based abuse and other highly traumatic crime have trauma-informed training. We therefore strongly recommend that there should be a statutory requirement that all criminal justice practitioners who come into regular contact with victims of serious violent, sexual and domestic abuse undertake trauma informed training.

It is important that a range of services are commissioned and that commissioners are mindful that gender inclusive services and/ or services which lack a gendered analysis can be problematic for victims of certain types of crime. This is particularly an issue in sexual violence and domestic abuse where the drivers, experiences of violence and abuse and impacts are 'gendered'. Many services insist that in order to be properly 'trauma informed' it is vital organisations have foundations built on this analysis.

Allied to this is a very specific issue which faces some groups of victims to a greater extent than others. Disabled victims are frequently seen in policy terms as a homogenous group 'the disabled' but this belies the reality that abuse of disabled people is also a gendered issue. At a national level data is often not even disaggregated by gender but where this is the case it is clear that disabled women and girls are much more likely to be sexually abused/ assaulted than non-disabled women and girls. They are also more likely to be abused/ assaulted than disabled men and boys.

The same issues arise in national policy on children, the drivers, patters and impacts of abuse in children are different depending on whether they are boys or girls and the services they require are therefore different and should be tailored accordingly. Government should show leadership in this area so that local commissioners can comply with their public sector equality duty. Arguably gender inclusive domestic abuse and sexual violence services risk non-compliance with this duty.

It is also vital that trans and non-binary people are able to access support in an environment that is inclusive and comfortable for them.

We strongly recommend that there is an amendment to Section 5 of the Police Reform and Social Responsibility Act 2011 to require Police and Crime Commissioners to provide a plan for victim services as part of their five-year policing plan and this should include a requirement to set out within that plan how they intend to meet their PSED.

Importantly what victims want, and need are options. We heard recently that the Respect men's helpline mostly receives calls from men who are heterosexual, many gay men experiencing domestic abuse prefer to contact Galop. For some victims a service which they perceive is tailored to their personal characteristics will be vital, others may be less concerned about this, the point is that they should have some choice, particularly around gender.

We strongly recommend that there is an amendment to Section 5 of the Police Reform and Social Responsibility Act 2011 to require Police and Crime Commissioners to provide a plan for victim services as part of their five-year policing plan and this should include a requirement to set out within that plan how they intend to meet their PSED.

We recommend that guidance accompanying any duties is clear about the importance of choice for victims.

We recommend that government creates a men and boys interpersonal violence strategy.

Examples which can help in commissioning 'VAWG' services

The VAWG sector several years ago produced some shared service standards. These were in part designed to aid commissioners in ensuring that high quality services are being commissioned through the contracting process, and that provision is of a coherent and consistent standard across the VAWG sector. These kinds of standards created by a sector can greatly help commissioners navigate the variety of different organisations who may be providing services.

There is also a Commissioning Toolkit designed by Women's Aid and Imkaan which is designed to help local commissioners commission services for women and children. We strongly recommend that commissioners are signposted to this resource and that those considering this response read it the toolkit and consider its' principles particularly when thinking about local duties.

The Male Survivors Partnership have created a set of service quality standards for organisations providing services for male survivors of interpersonal violence and an accompanying implementation guide for commissioners which could also be useful when considering duties on commissioners.

We recommend that government considers sector shared commissioning guides and services standards as a good starting point for any duties.

Children as victims

Whilst we are not 'experts' in children and indeed there is a Children's Commissioner who will no doubt be responding to this consultation, we do wish to make the following points

about children, in addition to the problems cited above of considering children in policy terms in a degendered way:

Firstly, as we mention again in our responses to Chapter 4 The Victims' Commissioner is currently researching victim advocates. The emerging findings demonstrate that are number of areas have specific ISVAs (or CHISVAs) and IDVAs (or CHIDVAs) in place for child victims of these crimes. These roles provide specialist rape crisis support for children and young people and targeted support for children experiencing domestic abuse.

Furthermore, a limited number of areas have specialist child advocate roles across other areas. This includes for children impacted by child sexual exploitation and those that target young people involved in, or at risk of, gang involvement and exploitation.

The availability of all such advocate roles for children is patchy and inconsistent across England and Wales. This means a postcode lottery for some of the most vulnerable victims of crime. These roles should be evaluated and, where shown to be effective, should be rolled out consistently in order to ensure that all child victims are able to access appropriate advocate roles.

Many specialist services who deal with domestic abuse or sexual violence do also provide services specifically for children and as such should be involved along with 'children's charities' in helping to design provision for child victims of these crimes.

Secondly, we note that the 'Child House' model of support for children who have experienced sexual violence has gained some popularity in policy circles and whilst we can see the benefit of specialism 'all under one roof' we know that the specialist sector has some concerns about this model, including that police are co-located with medical and therapeutic services which can suggest that a child can only access 'therapy' if they also report to the Police. They are extremely costly when money may be better spent elsewhere and there is a suggestion that certain categories of children are more likely to access the service i.e. ones whose parents/ guardians are better able to advocate for the child. We strongly recommend that when government is considering statutory duties around services for children they include 'subject matter experts' as well as 'child' experts i.e. sexual violence charities as well as children's charities.

Finally, the Domestic Abuse Act 2020 (DA Act) recognises children experiencing domestic abuse are victims in their own right but there is confusion from some service providers of what this actually means. It would appear many are unclear about how this will affect commissioning at a local level. It is vital that this is clarified and that any duties under this law are compatible with the DA Act. This is particularly important as the statutory duties on local authorities under that act exclude community-based services. As with sexual violence above it is vital that government consults not only children's charities but also specialist domestic abuse charities when designing commissioning duties around services for children experiencing domestic abuse.

Whilst this is a vital and welcomed development for children experiencing domestic abuse, children in families who are victimised by other types of crime are not recognised as victims in their own right currently even though they may experience significant trauma. For example, children who have experienced burglary may be deeply affected by this but would struggle to access support. Government should consider this in how support is commissioned.

We strongly recommend that in designing commissioning duties around children government includes specialist subject matter expert service providers as well as children's charities.

Other serious violence

Whilst our answers to these questions focus mainly on domestic abuse and sexual violence, we would argue that victims of any traumatic crime for example victims of trafficking should have access to trained advocates, like the IDVA or ISVA role but tailored to other types of traumatic crime. There also needs to be access to other forms of support, we hear that those experiencing other violent crime are often only able to access IAPT (Improving Access to Psychological Therapies) which is frequently around 8 sessions of telephone Cognitive Behavioural Therapy (CBT) (see below question 28). Whilst this may be helpful for some victims of crime for many this is inadequate, and they will require a longer and more holistic approach.

We recommend that victims of other forms of serious violence/ traumatic crime are able to access trained advocates and therapeutic support.

Migrant victims

A group of victims who are frequently excluded both from the criminal justice system and from services (because of commissioning policies) are those with insecure immigration status. The government's failure to offer protections to this group is one of the main reasons that the UK is yet to ratify the Istanbul Convention.

We strongly recommend that any victims law contains a non-discrimination clause to ensure that victims who have insecure immigration status are treated as victims of crime not as 'suspect' immigrants.

Question 26:

a) What can the Government do to ensure that commissioners are adequately responding and implementing the expertise of smaller, 'by and for' organisations in line with local need?

b) Should national commissioning play a role in the commissioning framework for smaller, 'by and for' organisations?

- Yes – please explain why
- No – please explain why

Question 27: What can local commissioners (local authorities and PCCs) do to improve the commissioning of specialist 'by and for' services for their area?

'By and for' services are vital and preferred by many service users. Current commissioning structures do not work well for specialist by and for organisations. Central government ring-fenced funding, strategic planning and implementation of a national framework would help. At local level commissioners must consider how their tenders are biased towards larger generic organisations and must strive for a 'do no harm approach'.

Forced Collaboration/ partnership working

An abiding issue which is touched on in the answer to question 23 is that of 'forced' partnership working. Many specialist 'by and for' organisations find that the only way to compete in the competitive market of commissioning is to enter into partnership with larger better resourced organisations. These are frequently not comfortable arrangements as they arise under duress of circumstance.

To expand on this we refer to the 2017 Imkaan briefing 'Good Practice Briefing: uncivil partnerships? reflections on collaborative working in the ending violence against women and girls sector' where they describe how 'Organisations can experience themselves as struggling, fighting for funding, or having less voice than larger, well-funded charities.'

They outline how their members 'who are mainly small, local BME-led organisations, describe the challenges of working in partnership with larger non-BME organisations. This can include ongoing micro-aggressions (such as questioning of professionalism), attempts to enforce limitations on the parameters of work (e.g. assuming / demanding that an organisation only works around issues such as forced marriage, because they are a BME service provider), exclusion from local partnerships, policing of feminist credentials, competition for BME specific funding contracts, and even bullying of staff.'

Imkaan further outline how often small organisations feel forced into partnership working due to the nature of commissioning and funding regimes, frequently these partnerships are pragmatic in nature, due to existential threat or fear of being subsumed. We hear that despite this briefing dating back to 2017 these issues persist.

Whilst we broadly recognise the benefits of partnership working, particularly at local level it is vital that commissioning practices do not in avertedly exacerbate this already fraught area.

The problems with commissioning of partnership working for the specialist by and for sector are further outlined in Imkaan's 2018 briefing 'From Survival to Sustainability'

- ‘The issue of partnerships is one that is being routinely raised by members as an area which is fraught with difficulty. Imkaan has witnessed the ways in which members are forced into locally commissioned partnerships under the following circumstances:
- Local authority tenders being drafted in ways that subsume multiple contracts into a single large contract to be awarded to either a single [larger and possibly more generic] provider or to a consortium
- Being informed by commissioners and local agencies that a failure to join a partnership will result in exclusion from not only the bidding processes, but also other local structures such as the domestic violence forum
- Contract criteria excluding smaller providers from the framework, leaving them with no choice but to partner with [usually larger] organisations or in at least one case, to be subcontracted by a larger organisation.
- Local needs assessments excluding BME provision or removing the requirement for this provision to be BME led.

Where organisations have refused to enter into the partnerships, this can have serious consequences including closure. Members sometimes resort to being strategically pragmatic in order to ensure not only an organisation’s survival but also to attempt to influence / counter wider agendas. As such some members have entered into partnerships and consortia, despite the strain places on individual workers and on the organisations. However, BME organisations are increasingly coming together, including across different regions to establish autonomous BME led collaborations and consortia. For example, the Samira Project is a London-based partnership drawing together BME providers with a focus on outreach work; and the Oya consortium is a newly established partnership of BME refuge providers, seeking to develop autonomous, collaborative working structures which will support BME women and children within a black feminist ethos.’

Collaborative working can if the tender is well-designed work well. In their response to the government’s VAWG strategy consultation (2021) Stay Safe East discussed commissioning of specialist by and for services:

‘When disabled women do access support services, they find that these services are not always geared to their needs. This is especially the case for domestic abuse services. Most commissioned IDVA services work mainly by phone and are expected to work with high numbers of survivors for a short period of time – in some cases as low as six weeks and provide advice and information rather than advocacy.

While this may work for some survivors, it rarely does for disabled, Deaf or Black and minoritised women who face complex barriers to safety. Disabled participants in the European research[1] stated that ‘time’ and access were the two most important factors in how they felt that services responded to them. Stay Safe East works on average with clients for two years but in some cases we keep cases open over four or five years because a woman needs that time, trust and support to start making changes in her life. We also do not ‘separate out’ her experiences of sexual and domestic abuse, loss of human rights, misogyny, racism, homophobia or everyday disablism, but support her how she chooses. Like most specialised ‘by and for ‘services, we provide holistic support tailored to client needs. This requires resources and commitment and a change to the ‘one size fits all’ approach.

[1] User-led European research on Specialist Services for Women with Disabilities who have experienced violence

The strategy should address the role of local commissioners. Stay Safe East has benefitted from being included by Victim Support and Solace in bids for contracts to MOPAC for London domestic abuse and VAWG services, as a result of which disabled women and men across London now have access to specialist support. MOPAC have also prioritized 'by and for' organisations (BAME, LGBT and disability) with a specialist VAWG fund. To our knowledge, this model of commissioning has not been had not been used elsewhere.

Stay Safe East only operates in London. At present there are no other specialist services for disabled survivors in the rest of England and Wales. Capacity building is going to be essential – Disabled People's Organisations working with women's organisations and disabled survivors to create new services for disabled survivors. Such partnerships must be led by disabled women. This is a long-term project which requires seed funding.

There is growing awareness amongst VAWG organisations of the need for tailored responses to disabled survivors, and the number of their disabled clients is growing year on year. The involvement of Sign Health and Stay Safe East as specialist services led by Deaf and disabled women alongside organisations of disabled women such as Sisters of Frida or of survivor groups such as Disabled Survivors Unite and Me too/ARC has been critical in bringing about this change.
This trend needs to be supported by Government with additional resources for access, communication support, more time to work with survivors, training and engagement with disabled survivors.

So, in practice unwittingly exclusionary tenders or commissioning practice can squeeze out smaller specialist services. This is a problem because research* shows that overwhelmingly people prefer to be supported in 'by and for' organisations. Smaller organisations often exist in a state of permanent existential crisis and lack the resource to devote to a tender bid. Procurement processes favour bigger organisations, commissioners need to be aware of this and need to consider how their process impacts the ability of smaller organisations to bid. Commissioners also need to consider the impact of specifications, for example many tenders will now specify gender neutrality, but this can be problematic in terms of some services such as refuges and other VAWG services.

A national framework and strategy to ensure adequate by and for provision
A national framework and ring-fenced funding could assist here. This should be co-designed with specialist by and for organisations who represent a wide-range of specialist by and for provision including deaf and disabled people's organisations to ensure that these existing tensions are not made worse.

In their report Imkaan make recommendations to government about the issue of commissioning by and for services:

- A 5-year strategy for addressing this issues affecting this sector, which should include a national funding stream. This should be administered centrally and be focused on ensuring BME led by and for organisations receive core funding. This should be ring fenced and accessible only to BME ending VAWG organisations in order to prevent the current dynamic where non-BME providers are able to bid for BME services, leading to further marginalisation of BME ending VAWG organisations. The ring-fence approach should also prioritise the most vulnerable organisations in order to ensure that they are able to access adequate funding to stabilise services.

Similarly, they make recommendations to local commissioners:

- Develop a ‘do no harm’ approach to commissioning, which should involve working with BME ending VAWG organisations as key partners in local ending VAW strategies including ensuring that needs assessments meaningfully include BME providers.

- One size does not fit all. It is important to recognise the role of BME ending VAWG organisations. While single contracts are easier to manage, multiple contracts preserve leadership, expertise and specialism.

- Draw on the framework laid out in the VAWG Commissioning Toolkit

We strongly recommend that government co-designs with specialist ‘by and for’ organisations a national framework for commissioning.
We strongly recommend ring-fenced centralised funding for the by and for sector.

Question 28a: What challenges exist for victims in accessing integrated support across third sector and health service provisions?

Question 28b: What and how could practical measures or referral mechanisms be put in place to address these?

The pathways between health, particularly mental health services and sexual violence services need to be improved. We hear that whilst health bodies such as CCGs rarely fund sexual violence services, most areas do refer victims of sexual violence to their local sexual violence services as the 'Improving access to psychological therapies (IAPT) offering is not suitable for dealing with complex trauma. We strongly recommend that there should be an expectation as part of any local duties that some funding for specialist sexual violence services will come from the heath budget with better working practices across health and CJS commissioners.

We hear that there are real issues around how third sector services work with health.

This is particularly an issue where these 2 provisions meet such as in sexual violence where health are often involved from a mental health perspective.

In their 2021 report 'Holding it together' Rape Crisis England and Wales discuss the 'pathway' issues that arise at this intersection, explain that few centres receive health funding:

'CCGs and Local Authorities categorise sexual violence and abuse as crimes, rather than mental health and wellbeing issues. This is despite the majority of victims and survivors not accessing the criminal justice system and requiring specialist sexual violence and abuse counselling and therapy.'

This is despite the fact that in many areas' 'health' refer people to Rape Crisis Services as NHS mental health provision is simply not designed to deal with such complex trauma. That same report contains a recommendation to commissioners:

'CCGs and Integrated Care Systems must recognise the high levels of demand for specialist sexual violence and abuse community-based services such as the bespoke, wraparound and trauma-informed services provided by Rape Crisis Centres. CCGs, Integrated Care Systems, and regional NHS leads need to commit to reducing fragmentation (as per NHS SAAS priorities) in care pathways by appropriately funding specialist Rape Crisis Centres.'

Although this policy and legislation sits with the Ministry of Justice there should be proper cross-government working on the issues of commissioning victims' services because commissioning is not just within CJS bodies, the legislation and statutory guidance should also place clear expectations on health around commissioning of services.

In some areas, health works well with other commissioning bodies. This is particularly the case it seems in devolved administrations. We heard about how this works in Greater Manchester. Survivors Manchester is commissioned jointly by CCGs and the PCC/ Deputy Mayor. This would suggest that amalgamating funds and co-commissioning can work really well.

As with other commissioner's it is vital that health commissioner's also meet the 'backroom' costs of services.

We recommend that there is cross-government working in this area to ensure that health commissioners are where appropriate subject to any duties arising from this legislation.

We recommend that there are clear expectations set for 'health' commissioners when it comes to commissioning victims' services.

Question 29a: Do you agree that we should explore increasing the surcharge?

Yes – please explain why

No – please explain why

Don't know / no answer

b) Should we consider an overall percentage increase (for example, increasing the surcharge rate by 20%)? If so, do you have any views on what the percentage increase should be?

c) Should we increase the minimum rate (for example, to £100)? If so, do you have any views on what the minimum rate should be?

Question 30a: The surcharge for fines differs to the other surcharge impositions, as it is paid by both individuals and organisations and is calculated as a percentage amount of the fine with minimum and maximum caps. Do you agree that we should review the surcharge paid for fines?

Yes – please explain why

No – please explain why

Don't know / no answer

b) Should we review the cap rates for surcharge amounts for fines? If so, do you have any views on what the minimum / maximum caps should be?

c) Should we review the percentage amount? If so, do you have any views on what the percentage amount should be?

Note: The Victims' Commissioner will not be submitting a response to these questions. It is felt that this is beyond the scope of this office.

Chapter 4 – Improving advocacy support

Question 31: How do IDVAs fit into the wider network of support services available for victims of domestic abuse?

Question 33: How do ISVAs fit into the wider network of support services available for victims of sexual violence?

IDVAs and ISVAs are highly valued by victims and have a significant impact on the victims' journey. The government must invest in these key roles, but additionally, it is important to fund other victims' services such as outreach and counselling. There must be statutory duty for relevant public bodies (e.g. PCCs, health bodies and local authorities) to fund community-based services for victims of domestic and sexual abuse.

IDVAs and ISVAs cover a broad range of different roles and, so, fit into the wider network of services in differing ways.

The wider network of support services available for victims of domestic abuse and sexual violence must include appropriate legal safeguards, free legal advice where the victim's European Convention on Human Rights (ECHR) rights come into play and a strengthened Victims' Right to Review.

The valuable roles of IDVAs and ISVAs

IDVAs and ISVAs each have a crucial and important role within the network of support services available for victims of respectively domestic abuse and sexual violence.

Victims strongly value the role of ISVA and IDVA. These roles have a significant impact on the victim's journey, including with the relatively few victims who enter the criminal justice system. Our recent review of rape survivors and the criminal justice system found that, in the sample 93% of survivors who had received support from an ISVA or other support service reported the incident(s), compared with 54% without this. Furthermore, ISVAs were viewed as an important source of support with 90% of respondents saying that they were very important or important. Victims who have corresponded with us have told us of the "wonderful support" they have received. This has included helping victims to navigate the criminal justice system and supporting victims to complain about poor treatment.

Nonetheless, the IDVA and ISVA roles must be viewed within the context of the broader support services and the role they perform outside the criminal justice system. Data from 2018, from Women's Aid, estimates that only 18% of women who had experienced partner abuse in the preceding 12 months reported it to police. Similarly research from the sector shows that only 20% of women who have been raped report to police. We think that the situation will be similar for male victims.

Despite the small numbers who enter the criminal justice system it is clear from our rape survivors survey and from observation projects which have taken place in the Special Domestic Violence Courts that there are insufficient ISVAs and IDVAs to support those victims. Given the premium that is put on those services and the government's determination to improve how the courts deal with domestic and sexual abuse it is imperative that there is more funding to make available the valued services of IDVAs and ISVAs who do attend court. There is no doubt that such investment will sustain many more criminal justice cases which would otherwise not be sustained, at a cost to the agencies, to the victim, potentially to any future victims of any guilty defendant and to justice.

We are aware that many IDVAs and some ISVAs do not go to court with victims, working for them instead in society at large. Although many ISVAs and IDVAs support victims throughout their criminal justice system case, they do not necessarily just do this. Some work with clients outside the criminal justice system entirely.

IDVAs

The purpose of IDVAs is to address the safety of mainly high-risk victims of domestic abuse to make them and any children secure from the point of crisis by assessing their risk and developing options and safety plans. Thereafter they give personal support and help them to engage with local statutory and other agencies to manage the practical consequences of their abuse and they can act as a link to counselling and therapy services in the longer term. They work as part of a Multi-Agency Risk Assessment Conference (MARAC) to protect their high-risk victims, where they engage with police, local authorities and others to ensure a web of safety around the victim. This can often include criminal and civil justice measures to protect the victim or restrain the perpetrator. The victim does not attend the MARAC meetings and it does not always follow that they will have to attend court. If there is a wish/need for the magistrates' court to be involved whether from a MARAC or otherwise, IDVAs sometimes attend the court in the absence of the victim at preliminary and other hearings where decisions are taken about such vital matters as whether to grant bail or not and if so on what terms. The IDVA will act as liaison with the CPS representative to ensure that the victim's wishes/needs for safety are communicated to the Bench. Where there is a report to police IDVAs can often attend with the victim to make their statement and for other purposes

ISVAs

ISVAs are specialist advocacy services whose role is to provide emotional support and information to victims who are thinking about reporting to the police or have reported. If someone is thinking of reporting, an ISVA will help with more information about what will follow. They will support a victim to have their voice heard, help to empower victims to make the right choices for them and go with them to important appointments or to court if that is what the victim wants. They can also support with emotional and practical issues which may follow from the sexual violence such as support to access health housing or education services and with next steps, whether the case goes ahead or not. ISVAs are very valued but would themselves agree that their success in sustaining victims is shared with counsellors who tackle the emotional and psychological consequences of what is often a life-changing or traumatising offence. ISVA and counselling services often come from the same third sector organisation, many supporting women and there are, in the sector, specialist ISVAs who support men, who support LGBT victims and some who support girls and boys (CHISVAs).

In the criminal justice system, IDVAs and ISVAs have to be seen as fully trained, trusted professionals with a defined role which is constructive for the court. The consultation document (p53, f/n 86) itself quotes what is widely known in the hidden harms sector that both ISVAs and IDVAs are frequently prevented from supporting victims at court.

This puts the value of the government's increasing investment in both kinds of advocate seriously at risk. Long court backlogs which are estimated to continue for at least two more years, also put the role of sustaining victims at a premium. It seems clear that some criminal justice authorities not including some of the judiciary do not all understand the nature and purpose of these advocates.

We strongly recommend that the high-quality training and subsequent accreditation standards required for both ISVAs and IDVAs should be set out and made known to all the criminal justice agencies together with a description of the ethical requirements they must fulfil. Such a provision removes scope for variable practice

from one court to the next and gives victims a guarantee that they will be able to give evidence with the support of their advocate if they so wish.

We recommend that the government continues to invest in advocacy services as quickly as possible, to the stage where an addition to the Victims' Code giving the right for every victim of sexual or domestic abuse to have the services of such an advocate in the criminal justice system can be implemented when the Victims' Law is given Royal Assent. We would add that that should not be achieved to the detriment of those victims who do not enter the criminal justice system.

We will return in answer to later questions to the need for the government to consider ensuring similar rights to specialist advocacy for all victims of serious violence, trafficking and other traumatising offences.

Community based services

It is crucial to ensure that a statutory duty is introduced on relevant public bodies (e.g. PCCs, health bodies and local authorities) to fund community-based services for victims of domestic and sexual abuse. Local authorities already have responsibility to deliver accommodation services and, without a similar duty for community-based services, there is an obvious and serious risk of two-tier system that leaves victims without appropriate support including IDVA services.

Our response to chapter three refers to these services including advice services, advocacy services and recovery and support work.

The government has said that this will set expectations for the standard and availability of victim support for victims of domestic abuse and sexual violence. This will complement the existing duty for tier one local authorities to deliver support to victims of domestic abuse and their children in safe accommodation.

Refuge accommodation is hugely important, but the majority of victims stay in the home and access community-based services such as IDVAs. **All victims of domestic abuse need to have access to local protection and support in their own communities.**

We recommend that a statutory duty is introduced on relevant public bodies (e.g. PCCs, health bodies and local authorities) to fund community-based services for victims of domestic and sexual abuse

A broad range of IDVA roles and locations

We are researching the range of advocacy services available for victims. This research has highlighted a diverse range of locations where IDVAs are based or spend time including hospitals, police cars, primary care settings and courts. Placing IDVAs in these locations usually has two purposes. Firstly, it is to act as a link between the work carried out at the location and the domestic abuse services so that there is awareness-raising about the still little understood nature of domestic abuse. Secondly, it is to give access to IDVA services and expertise to victims in locations where domestic abuse can come to light, but which have a different function without the knowledge to deliver expert support for the victim.

Specialist ISVAs

ISVAs may specialise in their clients. There are Child ISVAs (or CHISVAs), LGBT+ ISVAs, disabled people's ISVAs and male specialist ISVAs. These differing client bases may have different requirements from agencies so that the ISVA may engage in varying ways.

IDVAs, ISVAs and wider advocacy roles

We have received feedback that raises concerns on the approach of focussing on IDVA roles and not on some of the wider advocacy roles that exist in the sector, particularly in specialist services and 'by and for' services. 'By and for' services provide highly tailored services the groups of victims with protected characteristics. This includes LGBT+, Deaf, disabled and black and minoritised victims and survivors of domestic abuse as well as migrant women.

Specialist 'by and for' services (including services for deaf and disabled people) have advocacy roles which do not necessarily neatly fit the ISVA / IDVA models, but which are highly valuable and often specialised around the cultural needs of the people they are supporting. Sector representatives tell us that an over-rigid definition of the ISVA or IDVA roles will not be helpful as it will present practical challenges e.g. cost of training. Furthermore, it may result in other advocacy roles being less respected by other agencies.

Other specialist agencies have underlined the need for specialist services to have equal access of provision of services. They note that the government should look to support development of specialist advocate training and ensure that funding is available for specialist charities to access training.

It is clear that any definitions of ISVAs and IDVAs must provide sufficient flexibility to ensure that the roles provided by 'by and for' and specialist services are encapsulated within the definition and are not excluded.

Engaging with other agencies

Our research has highlighted both advantages and challenges for advocates working with other agencies.

A strong advantage of advocates, such as IDVAs, is their ability to build victims' trust with agencies within the criminal justice. However, the research found that this requires advocates such as IDVAs to develop detailed understanding of other agencies to help victims to navigate them. The research also found that agencies sometimes had competing priorities to advocates and that a lack of clarity on the role could cause friction. **Any review on the role of IDVAs and ISVAs must recognise the local knowledge that they must attain and the importance of clarity of role in order to ensure that they are best able to function with other local services.**

The research also found that the role of advocates must be viewed as an addition to other agencies. IDVAs must not be viewed as a replacement for other services. This view has since been reiterated by some agencies within the victims' sector during the pandemic. Services reported that IDVAs were being left to pick up the pieces when other services, such as drug, alcohol and mental health services, were cited as having less engagement with clients. **It is important to ensure that IDVAs are in addition to these services and are not a replacement.**

Independent legal advocacy

Victims of crime must be provided with free and independent legal advice that distinct and separate from that from an advocate, such as an ISVA, where the victim's European Convention on Human Rights (ECHR) rights come into play. This role should be undertaken by a qualified lawyer.

The most common circumstance where this will be relevant is in cases of sexual violence and rape.

In some cases, despite the stance in the adversarial system that that the prosecution is brought on behalf of everyone in society, the individual victim's legal interests may differ from those of the state. This is particularly likely where the victim's rights under the European Convention on Human Rights (ECHR) are at stake and, to date, has occurred most frequently in connection with the victim's right to private and family life under Article 8. We have discussed this in detail in our response to chapter one.

As has been well rehearsed in the media, in the government's own End-to-End Rape Review and in debates around the digital extraction clauses in the Police, Crime, Sentencing and Courts Bill, it has become almost routine for victims of rape to be subjected to 'credibility trawls'. This is where victims are asked unlawfully to relinquish their private and personal information for scrutiny by the police and prosecution. This usually requires them to give police their mobile phone, passwords to email and social media accounts and often they are also asked to give police permission to seek third-party material such as GP, social services and education records for similar scrutiny.

The idea of independent legal representation for victims in these circumstances is not a new one. In 2005, the then government announced its intention to introduce legally aided representation for victims in homicide, rape and domestic violence cases, though it was not brought in. In March 2014, the Ministry of Justice again raised the idea of independent legal representation in a review of the treatment of victims in sexual offence cases, but they did not implement the policy either. It is time to give this reality.

In 2016, the Sexual Violence Complainants' Advocate (SVCA) scheme was piloted in Northumbria to engage local solicitors to provide legal advice and support to local rape complainants who were aged 18+ at the time of the offence and whose cases were recent.

The support primarily related to complainants' Article 8 rights to privacy, advising on digital download requests, although there was also scope for general information about the legal process, attendance at ABE interview and help with the Victims Right to Review scheme.

The pilot scheme took 83 referrals from September 2018 until December 2019 and has now been evaluated. Casefile analysis showed poor practice around victims' privacy rights, with some police officers believing there was no need to seek consent from victims. Advocates challenged data requests in 47% of cases. The evaluation went on to show the scheme to be overwhelmingly positive. It increased complainants' confidence and understanding in the justice system and improved their ability to cope with mental health impact of system (which is likely to reduce attrition). There was an overwhelming consensus that the project changed organisational cultures, significantly decreasing police and CPS requests for indiscriminate evidence gathering. Police and CPS felt investigations were more efficient, relevant, and proportionate. A judge commended the pilot scheme as encouraging earlier consideration of disclosure issues, making cases more efficient and proportionate. All pilot participants agreed with principle of legal support being made available for sexual offence complainants.

We strongly recommend that the SVCA scheme is be rolled out across the country and that this entitlement becomes a right in the Victims' Code and can be implemented when a complainant of serious sexual violence is at risk of having their Human Rights compromised.

These are not the only areas where the state is unable to represent the legal rights of the victim. For instance, Section 41 of the Youth Justice and Criminal Evidence Act 1999 when a defendant applies to call evidence about the victim's previous sexual history will also trigger Article 8 rights. Victims are often not told about such applications (even though facts may be known to the victim which can undermine the basis of applying) CPS are reported to take stances out of court, on the basis of whether similar applications have been allowed in the

past, whereas the personal interest, reputation and well-being of the individual victim requires them to be fully informed with an independent presence, in respect of Article 8 at the application.

Further the CPS Victims Right to Review has been broadened by the High Court to offer an opportunity for a victim to make representations on why their case should be re-considered. CPS have been dismissive of victims' requests to review a refusal to charge, as our survey of rape survivors shows (f/n) A victim who wishes to use the voice that the Court has now given to them will require publicly funded representation to protect their interests and argue their rights. In 2005, government announced its intention to introduce legally-aided representation for victims in homicide, rape and domestic violence cases and in March 2014, a different government did so in a respect of victims in sexual offence cases. This should be non-means tested merits-based representation.

We recommend a statutory right for victims to be given free legal representation in respect of any decisions taken by police, prosecutors or courts that threaten their Article 8 Right to Privacy or any other right within the European Convention and specifically in order to ensure the victim's voice in the Victims' Right to Review.

Access to third party material

Whilst it is crucial to ensure that victims are able to access independent legal advice, it is also necessary to introduce legal frameworks that protect victims from unjustified demands for third party materials.

The Police Courts Sentencing and Crime (PCSC) Bill has introduced new safeguards to protect victims from any risk of over-intrusive requests for download of digital material. This is something we have worked hard on, gaining the support of the NPCC police lead and the Information Commissioner.

However, similar risks remain for over demand for personal material in respect of requests for third-party material such as medical records, notes of pre-trial and other therapy, local authority social services records, school records etc. These requests are usually required of complainants of rape and sexual assault. The government's End-to-End Rape Review points to a change over the past five years to the current position where, as quoted at Page 50 of the Research Report, police

'Felt that requests for third party and digital evidence had become standard CPS requests for all rape cases, rather than specifically for cases where there was a direct link to the incident with CPS lines of inquiry described as being too broad and a fishing expedition'

In fact, this is now so entrenched a practice that despite the ISVA Code of Practice containing strict boundaries for ISVAs around their relationships with clients (see page 10 of the code) including the rule that they must not discuss on-going criminal cases, ISVAs are frequently asked for their notes. For this consultation, the Survivors Trust interviewed 72 ISVAs of whom 60% had been asked to disclose notes as part of an investigation. This is quite wrong unless police are asserting a reasonable suspicion that ISVAs are randomly breaking their code of conduct and further that their notes, which should not contain any notes of events, in fact show a version of events different from the complaint. This is yet more evidence of an urgent need for legislative control properly regulating requests for third-party material.

The impact of these requests is that:

- Victims of rape are being forced to choose between justice and their right to a private life. Rape victims are facing unjustified demands for personal information held by third parties

(medical, education, social services, therapeutic records etc.) and cases are frequently dropped if victims do not sign over their information.

- Faced with handing over their personal information, many victims drop their complaints, leaving them with no resolution and the public with the risk of a criminal free to offend again. This is a particular risk in sexual offending, as research suggests that most offenders do so serially.
- On the rare occasion that an allegation ends up at trial, victims are sometimes ambushed by this information in cross-examination. This can include items such as a social worker's 'impression' of them as a child, which hold no relevance to the criminal charge.

We propose that the government introduces new safeguards, mirroring those already in place for requests of digital material, in order to protect victims from over intrusive demands. This should state that any requested material should form a reasonable line of enquiry, incorporate the precedent of Alibhai and meet the strict necessity test meaning that police must have considered other, less-intrusive means to access the data. Further information is available on our website.

Victims' Right to Review

Our survey of rape survivors highlighted the devastating psychological impact of victims' cases not going forward, and against this backdrop the opportunity to meet with the CPS and the formal Victims' Right to Review (VRR) scheme is an important recourse for such victims. However, in the survey, only a third of those respondents whose cases were not charged by the CPS recalled being offered a meeting.

The police and CPS VRR schemes allow complainants to request a review of any decision which will put an end to their case (for instance a decision not to charge). In 2020, the High Court established that in the CPS VRR scheme there is a fair opportunity for a victim to make submissions to get a favourable decision. If the opportunity is taken, the CPS must respond to representations made. This judgment was warmly welcomed by our stakeholders during our roundtable discussions with them.

The Victims' Law is an opportunity to place the victims right of review onto a statutory footing. This does not mean victim's view is determinative. The CPS/police make the decision, but victims need to be heard.

The police and CPS must uphold and implement the current Victims' Code requirements on the Victims' Right to Review. Furthermore, we recommend that the police are CPS are required to take all reasonable steps to advise a victim on details and progress of criminal proceedings, seek a victim's views regarding modifying or discontinuing charges, invite them to make representations of the Victims' Right to Review and respond to those representations and provide reasons for decisions to a victim.

Question 32: How might defining the IDVA role impact services, other sector workers and IDVAs themselves?

Question 34: How might defining the ISVA role impact services, other sector workers and ISVAs themselves?

We agree that the IDVA and ISVA roles should be defined. This will ensure that the roles are identifiable, recognised and respected by other agencies. However, this definition must be flexible enough to recognise the varied services these roles deliver, particularly within the 'by and for' sector. Any definition must also embed the importance of clinical supervision in order to contribute to a healthy and sustainable workforce.

Our research has highlighted core functions of the advocate as a professional who can speak on behalf of the victim, if need be, articulating their needs and preferences throughout the criminal justice journey. Advocates will also assist victims to make informed choices and seek to ensure that they receive their entitlements under the Victims' Code as well as challenging other agencies and speaking on behalf of the victim. Victims have contacted us to let us know how much they value their ISVAs engaging with other agencies to advocate for their rights. Whilst the research finds these common functions across many advocate roles, our responses to question 31 and 33 outline the specific functions of the IDVA and that of the ISVA. It is important to note that these are specific roles and that some victims may have both an IDVA and an ISVA.

However, the roles of advocates are diverse and evolving. IDVAs may be set in different locations (e.g. hospitals) where they have a focussed role; ISVAs may focus on specific groups of victims. Furthermore, 'by and for' services provide valuable advocacy work for victims but may not fit an obvious IDVA or ISVA model. This diversity means that there are no universally applicable and set definitions of the roles. Whilst Home Office guidance defines the essential elements of the ISVA role, this has guidance has not been readily promoted and seems to have had little impact. Furthermore, there is no universal definition of the IDVA role. The impact of the lack of a firm definition provides flexibility to meet victims' needs. However, it can also mean that criminal justice agencies have a poor understanding of the role.

Any definition of the IDVA / ISVA role must enable sufficient flexibility to meet victims' needs whilst delivering legitimacy to the role that will ensure its recognised and valued across the criminal justice system. Such a provision removes scope for variable practice from one court to the next and gives victims a guarantee that they will be able to give evidence with the support of their advocate if they so wish.

The Victims' Law Policy Paper includes a recommendation, and we again recommend, that:

Those practitioners who are accredited to offer vulnerable victims with practical and emotional support be recognised as such by the courts, relied upon as trusted professionals and are entitled to support such victims when they are required to give evidence in court.

Core standards for each role, with role flexibility

We have found that a number of functions are core to the role of all types of victims' advocates. For example, accessible, proactive contact, practical and emotional support are all seen as central to the role. However, the same research also underlines the flexibility required by these roles. The work of IDVAs and ISVAs will be led by victims' needs and must

be able to respond to individual needs to varied intensity of support throughout the victims' journey.

Specialist 'by and for' services have advocacy roles which do not necessarily neatly fit the ISVA/ IDVA models, but which are highly valuable and often specialised around the cultural needs of the people they are supporting. Sector representatives tell us that defining and standardising the IDVA and ISVA roles may not be helpful as it will present practical challenges e.g. cost of training. Furthermore, it may result in other advocacy roles being less respected by other agencies.

Services have also highlighted the importance of specialist services. This includes specialist roles such as male ISVAs, CHISVAs working with children and young people and ISVA services designed for women and girls. They note the importance and value of these specialist roles and feel strongly that specialist provision must continue to be commissioned to deliver this support.

Any definition of the role must balance the key functions of the advocate role with the varied demands and specialisms IDVAs and ISVAs deliver and ensure that the roles provided by 'by and for' and specialist services are encapsulated within the definition and are not excluded.

Opportunity for clinical supervision

Any definition of ISVAs and IDVAs presents an opportunity to address and overcome existing problems with the roles.

The sector report that ISVA and IDVA services are often not funded for dealing with the vicarious trauma that these roles face. This is within the context of intense pressures on these roles and where the sector report staff burning out and high turnover of staff.

Organisations such as SafeLives recommend appropriate support such as one-on-one clinical supervision on a monthly basis with a minimum criteria of group clinical supervision on a quarterly basis. This will help to ensure the emotional and psychological wellbeing of staff.

Defining the IDVA and ISVA roles presents an opportunity to define the support that these roles should receive and can overcome trauma and burnout for staff fulfilling these roles. Our response to chapter three considers how clinical supervision should be commissioned, stating that it should be funded as part of core role funding.

Question 35: What are the challenges in accessing advocate services, and how can the Government support advocates to reach victims in all communities?

There are a number of challenges for victims in accessing advocate services. These range from ensuring sufficient funding to meet demand to ensuring that services are accessible for all victims.

Appropriate funding and commissioning

Victims' organisations have told us that there is simply not enough funding to meet demand. The funding that has been outlined in the Victims' Bill consultation is to be welcomed and will be beneficial for victims where there is unmet demand**.** However, the service providers that we have spoken to report that the level of unmet demand is not clear or well evidenced and it is not clear whether the additional funding will meet it. Furthermore, organisations highlight the importance of seeing advocate roles within the context of other support services. Whilst many victims will not enter the criminal justice system, they still require ongoing support from services sometimes over long periods of time. Furthermore, organisations highlight that initial help, which is not provided by an IDVA or ISVA can provide the victim with the confidence to report to the police and enter the criminal justice system. Thereafter an ISVA or IDVA will support them. Advocates are an integrated part of a range of support services needed by victims. **It is crucial to ensure that services are available to victims when they need them.**

There are further concerns about funding that need to be considered to ensure that these services can be made available and accessed by victims. ISVA and IDVA services are not compatible with the short-term funding arrangements that have been used throughout the pandemic.

Stakeholders have advised us that many services that employ ISVAs/IDVAs did not apply for the short-term relief funding offered in relation to the COVID19 pandemic. This is because by the time these workers are recruited and trained, the short-term exceptional funding will have nearly expired. Without any guarantee that the post would be funded after March 2021, it was neither cost effective nor likely to deliver the consistent service victims need. ISVAs may take 6 months or more to be trained whereas IDVA training will take around 5 months. As ISVAs will generally support a victim for at least 6 months, longer-term funding is required to be of use.

Where commissioners did successfully apply for funding, they have pointed to fundamental commissioning issues that have hampered their work to recruit IDVAs. The funding announcement did not come until June, a few months into the financial year, and that they did not receive confirmation for 2022/23 funding until December 2021. As a result, domestic abuse services were unable to recruit to the roles, sometimes despite several recruitment rounds. Short-term and unconfirmed funding are challenges as they require short-term contracts that are unattractive to potential candidates. The same commissioners also pointed to a wider shortage of trained and experienced IDVAs.

Funding and commissioning structures must be designed in a way that recognises the long-term requirements for IDVA and ISVA roles. They must recognise the shortage of candidates and work to prevent structural problems in recruitment so that services within the victims' sector are able to recruit permanent members of staff. These issues were considered in the consultation for the Victim Funding Strategy and require an effective response.

This is particularly important while the court backlog is being tackled and victims must be supported for longer periods as they await a court date. **We support work that will enable long-term, sustainable funding that recognises the longer-term role that these advocates perform and supports them in doing so.**

Meeting the Public Sector Equality Duty

It is important to ensure that all public bodies, including commissioners, meet their Public Sector Equality Duty (PSED) in order to ensure that advocate services are available to all victims.

We know crime disproportionately affects vulnerable and minoritised groups. For example, SafeLives' report, 'Disabled Survivors Too: Disabled People and Domestic Abuse', found disabled women are twice as likely to experience domestic abuse than non-disabled women and typically experience abuse for a longer period of time before accessing support (3.3. years' average length of abuse versus 2.3 years). Galop's report, 'Recognise & Respond: Strengthening advocacy for LGBT+ survivors of domestic abuse', found more than one in four gay men and lesbian women and more than one in three bisexual people have reported at least one form of domestic abuse since the age of 16.

As well as being more likely to become a victim of crime, we are also aware that people from minority groups are less likely to seek support. This was recorded in Catch 22's 2018 report 'The Changing Needs of Victims' which found:

"Reasons for this vary across groups, but active outreach from local, tailored services can help to create support pathways for these demographics. Services should always be flexible and responsive enough to support people from all backgrounds, and if there's more expertise needed, teams should work with local specialists to make sure individuals get what they need."

We have heard recently (from The Survivor's Trust, Rape Crisis England and Wales and Stay Safe East) that learning disabled adults who should have an intermediary for ABEs and other aspects of the criminal justice process are frequently interviewed without them and that there is a general lack of specialist support for this group. It is unclear if this is because of a lack of understanding from police that an intermediary is required or a dearth of specialist support generally, we believe it is likely the latter and it is of great importance that this is addressed.

According to an Imkaan report published in 2020, 'Reclaiming Voice':

"The exploratory study of service responses to BME women and girls experiencing sexual violence (Thiara, Roy and Ng, 2015), which preceded this current research, found that existing services were viewed as inaccessible and underutilised by BME women even in areas where there are considerable BME populations".

Another issue is the availability of specialist support services for minoritised groups to turn to having become the victim of a crime, and this was raised by our stakeholders from the domestic abuse sector. Provision of such services falls to Police and Crime Commissioners and the availability of their commissioned services across England and Wales is variable, not least because in some parts of the country they simply do not exist. The current situation is that access to specialist support services for minoritised groups is a postcode lottery. Where such support is not at hand, inevitably some groups of victims may be reluctant to report or to engage with the criminal justice system.

Representatives of the sector have told us that survivors of sexual violence will want to specify the gender of the ISVA who supports them. For example, we have been told that many male victims would be more comfortable being supported by a male ISVA.

Furthermore, our current work has highlighted examples where victims' basic requirements were not being met. For example, an ISVA shared their experience of working with a non-

English speaking victim. The victim had not been able to engage with services previously as these services had not attempted to use an interpreter.

Looking across this broad range of evidence, it is clear there need to be changes to ensure statutory agencies fulfil their 'Public Sector Equalities Duty' obligations under equalities legislation.

Section 149 of the Equality Act 2010 places a Public Sector Equality Duty (PSED) on public authorities to have 'due regard to the need to', in brief, eliminate discrimination, advance equality of opportunity, and foster good relations.

The Victims' Law should require that PCCs include their plans for victims within their Police and Crime Plans. These plans should also include an explanation of how the PCC intends to meet the PSED over the period of the plan. This recommendation is also included in our response to chapter two.

Migrant victims

Minoritised groups are more likely to be victims of crime and less likely to report or obtain access to specialist services than majority populations. Service provision tailored to these groups can be patchy at the local level. Children, perhaps the most vulnerable of all victims, are not always being offered the services they need. And we have no systematic way of knowing whether CJS agencies are delivering on their obligations to victims under equalities legislation.

One significant obstacle to certain minoritised communities reporting crime and seeking support is the data sharing between the police and the Home Office immigration enforcement department. This deters migrant victims from reporting crimes and leads to discrimination since they are not treated as victims with all the protections and rights that this entails. This presents a barrier in victims being able to access support services that they would otherwise be referred to. Victims of crime have a right to be equally protected irrespective of their immigration status and the law should make this unequivocal.

The government response to the 2018 super complaint submitted against the National Police Chiefs' Council and Home Office by Liberty and Southall Black Sisters rejected a 'firewall' to enable migrant victims of domestic abuse to safely report domestic abuse to police without fear of being reported to immigration authorities. Whilst the response included a commitment by the Home Office to support any migrant victim who reports to police, this does not go far enough.

We recommend that the Victims' Law includes a non-discrimination clause to prevent victims who have insecure immigration status being treated not as victims of crime but as 'suspect' immigrants first.

Extending the advocate role

For vulnerable victims, particularly those who have been subjected to serious sexual or violent assault or who are bereaved as a result of crime, the criminal justice system can be challenging and distressing. For such victims to participate effectively in the process of justice, they need informed and empathetic support from professional practitioners, ideally an advocate who acts as a single point of contact and support them throughout their criminal justice journey. Whilst such advocates exist for certain groups of victims, there are other vulnerable victims who are not eligible for this one to one support.

The VC's Rapid Evidence Assessment of Victim Advocates looked at the benefits of victim advocates or 'advisors' in respect of vulnerable victims. It found some tangible outcomes for

victims arising from advocacy interventions, including evidence there may be a benefit to victims' mental health; and evidence that victims perceived an improvement in their safety following an advocacy support intervention e.g. a reduction in reported domestic abuse amongst victims. One study found that advocates' work was more effective in decreasing the fear for ethnic minority women compared to white, by almost threefold. There was evidence of improved court attendance and greater victim confidence in interacting with the system. The government's Victims' Strategy committed to exploring the case for Independent Victim Advocates further.

Recently, we have had feedback from the victims' sector that there is a case for Independent Victim Advocates for other serious crimes, noting that these posts are hugely important.

We are calling for specialist advocacy for all victims of serious violence, trafficking and other traumatising offences.

Question 36: What other advocacy roles exist that support victims of hidden crimes, such as forms of other serious violence? Please outline the functions these roles perform. To what extent are the challenges faced similar to those experienced by ISVAs and IDVAs? Are there specific barriers?

We are currently undertaking work on victim advocates and have identified the additional advocacy roles including:

- Youth advocates - providing trauma-informed support to young witnesses of violence, including an incident response capability.
- Advocates in place to support girls and young women who are involved in or at risk of gang involvement or, at risk of sexual violence and exploitation.
- Advocates for victims of exploitation and trafficking- providing specialist workers to support migrant victims of modern slavery.
- Specialist stalking advocates - providing advocacy, advice and support. Different advocates are in place for both intimate partner stalking and non-domestic stalking.
- Advocates for victims of crime with a learning disability.
- Independent Road Victims Advocate - The IRVA provides emotional and practical support to families bereaved due to road collisions. The IRVA also provides such support to those families where a loved one is catastrophically injured in a road collision.
- We are aware of specialist ISVA roles, of note is a specialised role for male victims.
- Generalist IVAs such as the multi-crime service offered by Victim Support.

This research is currently underway and will report further later this year.

We are calling for all specialist advocacy for all victims of serious violence, trafficking and other traumatising offences.

Question 37: How useful is existing guidance, and how can this guidance be strengthened?

As already stated, the our recent rape survey confirmed what other research has shown: that support of an ISVA/IDVA/CHISVA makes a huge difference to survivors and has a positive impact on attrition rates.

Respondents were asked about how important various forms of support were to them and overall ISVA support was ranked as very important by 65% and as important by 25% of 150 respondents.

However, despite this overwhelming endorsement from victims, the courts and CJS agencies frequently seem to have a poor understanding of the role or the value of this support. We have heard frequently of ISVAs not being allowed into a court room or the video-link room for example, or otherwise unable to do their job effectively, a point raised at our stakeholder roundtable for representatives of local victim hubs.

New, clear and widely disseminated guidance about the role and its parameters would help deal with common misunderstandings. It would ensure ISVAs do not face unwarranted barriers in doing their job, victims/survivors have appropriate support and the courts and judiciary can have trust in the role.

However, consistent with the concept of victims having participant status, with rights and entitlements underpinned by statute, this guidance should be on the basis of a statutory recognition of the role of victim advocates, with a right to attend court with their clients when they are giving evidence. Such a provision removes scope for variations in practice from one court to the next and gives victims a guarantee that they will be able to give evidence with the support of their advocate if they so wish. We therefore recommend that:

Those practitioners who are accredited to offer vulnerable victims with practical and emotional support be recognised as such by the courts, relied upon as trusted professionals and entitled to support such victims when they are required to give evidence in court.

Question 38: Is more action needed to define standards for ISVAs and to ensure they are met? If yes, who is best placed to take this action?

Question 39: Is more action needed to define standards for IDVAs and to ensure they are met? If yes, who is best placed to take this action?

Question 40: What are the advantages and disadvantages of the current qualifications and accreditation structures? Are there any changes that could improve it?

We agree that standards and guidance should be developed for both the IDVA and ISVA roles. The design of standards and guidance should be led by the sector, informed by international standards and provide an agreed and consistent set of guidance, standards and qualifications. These should all be centred on what makes the most difference for victims.

Advocates are valuable roles in place, in part, to secure victims' rights. Advocates must have the ability to directly complain to the Victims' Champion (see response to chapter two) on behalf of victims. The Victims' Champion must respond to these complaints independently and in a manner that will not impact future commissioning arrangements.

There are a range of issues associated with defining standards for ISVAs and IDVAs, who should take this action and the current qualifications and accreditation structures.

Improved guidance to define standards

The response to question 37 outlines the need for new, clear and widely disseminated guidance. This guidance should include details of the role of an IDVA / ISVA and its parameters. This will help overcome common misunderstandings and ensure that advocates do not face unwarranted barriers.

This guidance should be based on a statutory recognition of the role of victim advocates, with a right to attend court with their clients when they are giving evidence.

Any guidance, training and accreditation will create a cost to develop and maintain. It is therefore essential that any changes are centre on improving outcomes for victims. Training for both the IDVA and ISVA roles must be substantive, to a high quality and ensure that those undertaking it gain sufficient expertise and capability to deliver their role.

Any definition of standards should include relevant ethical frameworks and standards that are co-designed with the sector.

Who should take the action?

Any guidance, standards or training that are developed must be created through co-design and production with experts within the victims' sector. Any co-design must recognise and learn from the work that already exists. There are several agencies who currently provide accreditation and quality standards for ISVAs and support services, including Lime Culture, the Male Survivors Partnership, The Survivors Trust and Rape Crisis England and Wales. Similarly, organisations such as SafeLives provide accreditation for IDVAs and umbrella organisations such as Women's Aid have significant experience and networks. These organisations have built standards over a number of years and are based on experience and expertise. It is important that any defined standards recognise and build on this work. Any standards should take account of international standards such as the Istanbul Convention, which defines violence against women and girls as a human rights violation and form of discrimination. They must ensure the best possible support for survivors.

It is good practice for standards to be developed via co-design with interested parties. Any work to define standards for ISVAs and IDVAs should be co-designed with long-standing experts in the field. In this case, this is likely to be led by the sector with input from victims, commissioners of services and experts including the Victims' Commissioner, the Domestic Abuse Commissioner and academics.

Issues with current qualifications and accreditations

Commissioners of victims' services, in local authorities and PCC offices may not have as much specialist knowledge of what is needed as services that are already providing it. The current landscape includes different qualifications and standards for these roles. This can provide a challenge for commissioners who, in order to ensure a high-quality service, will seek to define standards within their specification.

Furthermore, it is challenging for commissioners to understand which qualifications and accreditations are appropriate for their area and to be assured that these are being met. **An agreed and consistent set of qualifications and accreditations would help to overcome these challenges and help commissioners to understand what high-quality services look like.** This must be co-designed with the specialist sector.

Ensuring transparency and quality assurance for victim services

Any standards and accreditation for advocates and victims' services must deliver quality assurance. This is crucial both for commissioners and for victims.

Any standards must be easy for victims to understand. There must also be clear routes for victims to complain when standards have not been met. We have received victim feedback where we have been told that fragmented or lack of care from an ISVA contributed to the victim feeling retraumatised and deciding not to seek specialist counselling from victim support services. It is important that these victims have a route to complain. Equally, it is important to ensure that there are transparent systems for redress and accountability to deliver ongoing quality assurance.

Providing advocates with a route to complain

Defined standards and accreditation for advocates must require that they are viewed as professionals in place, in part, to ensure victims can access their rights. This can involve complaining. Organisations have told us that making complaints on behalf of victims can be very difficult if the agency complained about also commissions the advocate. Having feedback treated constructively can rely on good relationships with individual staff rather than on any structures and systems. However, victims tell us that a key role they value is that advocates, such as ISVAs, support them to make complaints when things go wrong.

The proposed new complaint system, discussed in chapter two, is specific to breaches of the Victims Code and focusses on taking a complaint to a local Victims' Champion to be appointed by the PCC but independent of them. This should offer an independent route for complaints on behalf of victims. This relationship must respect the advocate role as defined and to be held to standards already discussed. This should provide advocates with the ability to complain freely and independently for a victim's rights without fear of losing funding or of not being re-appointed for a contract.

Question 41: How can we ensure that all non-criminal justice agencies (such as schools, doctors, emergency services) are victim aware, and what support do these agencies need in order to interact effectively with IDVAs, ISVAs or other support services?

There are examples of projects that have successfully engaged with non-criminal justice agencies, ensuring that health services and schools are victim aware. This needs to be expanded to a more strategic approach to ensure a consistent standard and embed victim care across all agencies.

Existing good practice

There are challenges in ensuring that non-criminal justice agencies are victim aware and can engage with advocates and support services. However, there is a range of research and good practice that demonstrates how this engagement can be achieved.

Our Rapid Evidence Assessment includes a summary of studies including those that consider the role of advocates in non-criminal justice settings such as hospitals.

Specific projects can be used to support and engage other settings in victim care and there are a number of examples within schools. Operation Encompass seeks to support child victims of domestic abuse when in school and enables schools to offer immediate support to children experiencing domestic abuse. There are also examples of IDVAs commissioned to link with domestic abuse services in schools to ensure good care and safeguarding for children.

There are further examples of initiatives within healthcare that seek to improve understanding of victims' needs. IRISi works with GPs to identify patients affected by domestic abuse and refer them to specialist services. It has developed to include additional areas including dentistry and sexual health settings and is exploring other areas of health including mental health settings, fracture clinics and paramedic services.

Where hospital based IDVAs are in place, research conducted by SafeLives has found that hospital IDVAs:

- Are more likely to be reach groups of victims that are less visible to other services.
- Are more likely to engage with victims that are very vulnerable due to a health issue.
- Have the opportunity to identify victims earlier.
- Improve victim safety.

This SafeLives report delivers a range of recommendations that seek to improve victim awareness within hospitals and in other settings (e.g. housing).

These initiatives provide some examples of how other agencies can become victim aware and interact with IDVAs and ISVAs.

Develop a strategic response

However, whilst there is successful practice available, this is often scattergun and is not a strategic, multi-agency response to the needs of victims. **The government should consider implementing a strategic response, prioritising the services most likely to be in contact with victims of domestic abuse and sexual violence.** For example, it could produce guidance for relevant agencies or governing bodies and recommend domestic abuse and sexual violence training for key agencies and staff.

Question 42: What are the barriers faced by ISVAs preventing effective cross-agency working, and what steps could the Government take to address these?

Question 43: What are the barriers faced by IDVAs preventing effective cross-agency working, and what steps could the Government take to address these?

Question 44: What are the barriers facing specialist or 'by and for' services preventing cross-agency working, and what steps could the Government take to address these?

ISVAs and IDVAs face many barriers to effective cross-agency working, this is even more acute for 'by and for' services. Government should provide leadership to deliver an effective Victim Funding Strategy which will overcome barriers created by commissioning. These barriers can also be overcome through effective definition of IDVA and ISVA roles which includes capacity to work in partnership with other organisations and encompasses the role of 'by and for' services. The government can also consider encouraging innovation such as co-location, however this must recognise and safeguard the independence of the role.

Our Rapid Evidence Assessment of advocate services pointed to a number of barriers that advocates face preventing cross agency working. These issues are common across advocacy roles but are often likely to be more acute for 'by and for' services.

Commissioning

The promised Victim Funding Strategy must recognise the importance of designing integrated systems for victims. Our response to chapter three considers commissioning in detail. Cross-agency working can be assisted through:

- Co-design of specification that research and recognise the roles of advocates and their role within integrated victim services.
- Commissioning that recognises and funds the long-term nature of the role, providing longer-term contacts that allow advocates to build stable working relationships with other agencies.
- Commissioning advocacy services in a way that is accessible for 'by and for' services.
- Ensuring that the voices of specialist services are heard e.g. services for children or male victims.
- Ensuring that commissioning services consider and embed information-sharing requirements and training needs.
- Learning from, and strengthening, existing good practice e.g. the National Statement of Expectations.

There is a tension in local commissioning where there may not be sufficient funds in place to commission the 'by and for' services that residents need, but where there is not high volume of demand. **The government should work with commissioners, victims and service providers to ensure that the Victim Funding Strategy recognises and addresses unmet need that can be delivered through 'by and for' services.** Please see our full response to chapter three, which discusses these issues in greater depth.

Understanding each other's roles

Previous research has highlighted the importance of all advocates and other agencies understanding one another's roles in order to overcome barriers to effective cross-agency working:

- Advocates need to understand the work of other agencies in order to support victims to access and navigate them.

- Advocates and other agencies need to have clarity over one another's role in order to avoid friction and ensure that victims can access the right services.
- The research also found that there can be a 'culture clash' between advocates and other agencies where those agencies don't share the knowledge or same priorities of advocates. In this contact, advocates often have an educational role, training and educating other agencies in their role.
- Advocates need to be 'in addition' to existing agencies and should not be viewed as a replacement.

The findings within this review looked at all advocate roles but are pertinent to both IDVAs and ISVAs. It is therefore essential that design and delivery of both IDVA and ISVA services acknowledge the importance of building understanding and recognise that advocates often have a training and education role. This need will be particularly important for 'by and for' services that deliver specialised services.

Building guidance to increase understanding of the role and access to other agencies
As previously addressed, we have found that courts and other criminal justice system agencies frequently seem to have a poor understanding or the role or value of the advocate role. This may lead to advocates being excluded from key elements of the criminal justice process, causing distress to victims and hampering them from conducting their role.

New, clear and widely disseminated guidance a definition of the role and its parameters would help to overcome misunderstandings. This should include a statutory recognition of the role of victim advocates, with a right to attend court with their clients when they are giving evidence. Such a provision removes scope for variable practice from one court to the next and gives victims a guarantee that they will be able to give evidence with the support of their advocate if they so wish.

The Victims' Law Policy Paper includes a recommendation, and we recommend, that:

Those practitioners who are accredited to offer vulnerable victims with practical and emotional support be recognised as such by the courts, relied upon as trusted professionals and are entitled to support such victims when they are required to give evidence in court.

Co-location
Our current research explores the impact of co-location for advocates and cross-agency working. Emerging findings suggest that co-location can overcome some barriers of cross-agency working. Co-location enables information sharing, increased understanding of each agencies' role and encourages better inter-personal relationships. There is also some emerging evidence that it can improve services for victims. For example, the process of obtaining special measures seemed to work particularly well where the Witness Care Unit was located alongside ISVA services and services like the court-based Witness Service. Court based IDVAs are able to help victims navigate the court process and hospital based IDVAs have reported increasing knowledge of domestic abuse amongst hospital staff.

However, there are some challenges with co-location. Any co-location can bring independence into question. This is particularly important where advocates are police-based. This may, in turn, reduce access to victims who do not want to engage with agencies such as police. We have received feedback from the victims' sector that has suggested that lack of independence can be a barrier for accessing services. This same feedback underlined the importance of transparency when advocates were not located independently.

Question 45: Please comment on the training required to support advocates for children and young people. How do these differ to adult advocate training, and are there barriers that exist to accessing this?

Note: The Victims' Commissioner will not be submitting a response to these questions. We do not have experience of this training.

Question 46: What are the barriers to effective work with children and young people in this area, and what action could the Government take to address these?

Question 47: What best practice is there on referral pathways for children and young people who are victims of crime looking for advocacy support, including interaction with statutory services? Are there barriers to these pathways?

Question 48: Would providing clarity on the roles and functions of children and young people's advocates be helpful? In your experience, are these roles broad or do they focus on specific harms and crime types that children and young people have experienced?

Children are particularly vulnerable, and it is crucial that they receive the support that they need. Our previous research has indicated that children's needs are not being met and recommends a statutory requirement for police and prosecutors to demonstrate that the involvement of a Registered Intermediary was actively considered in every case involving children under the age of 18, and with reasons given in cases where it was not considered to be appropriate.

Our current research points to a number of roles under development to support children. These should be evaluated and, where effective, rolled out to ensure all children can access support they need.

Furthermore, work with children must become more nuanced, recognising that children are not a homogenous group and delivering the support that is now required.

Our previous research

There are concerns about how children who are victims of crime can access support and how they are treated by the criminal justice system.

In February 2017, we published a report, 'Are we getting it right for young victims of crime? A review of Children's entitlements in the Victims' Code'. This review investigated the treatment of children and young victims of crime by criminal justice agencies. It found that these agencies were at risk of failing children and young people who come forward to report crimes because they were not being taken seriously or not believed by the police, social workers, teachers or by society as a whole.

The following year we published a further report, 'Giving a Voice to the Voiceless', which examined the role of Registered Intermediaries, who are specialists in communication and are provided to children and vulnerable victims to enable them to have a voice in the criminal justice system. Findings indicated that not all eligible victims were being offered a Registered Intermediary, there was inconsistent take-up of Registered Intermediaries across England and Wales, limited understanding of the role in the criminal justice system and variation in how vulnerability and eligibility was assessed. The report found the use of this service varied dramatically from force to force and there were different practices even within forces. This failure affected children particularly and the Commissioner was concerned many children were unable to access justice as a result.

To address the variable practice and to ensure that all child victims get the best opportunity to achieve best evidence, and in doing so, access to justice, we recommend:

A statutory requirement for police and prosecutors to demonstrate that the involvement of a Registered Intermediary was actively considered in every case

involving children under the age of 18, and with reasons given in cases where it was not considered to be appropriate.

Current research

We are currently researching victim advocates. The emerging findings demonstrate that are number of areas have specific ISVAs (or CHISVAs) and IDVAs (or CHIDVAs) in place for child victims of these crimes. These roles provide specialist rape crisis support for children and young people and targeted support for children experiencing domestic abuse.

Furthermore, a limited number of areas have specialist child advocate roles across other areas. This includes for children impacted by child sexual exploitation and those that target young people involved in, or at risk of, gang involvement and exploitation.

The availability of all such advocate roles for children is patchy and inconsistent across England and Wales. This means a postcode lottery for some of the most vulnerable victims of crime. **These roles should be evaluated and, where shown to be effective, should be rolled out consistently in order to ensure that all child victims are able to access appropriate advocate roles.**

Other issues for children and services

Our response to chapter three outlines a range of issues for child victims and access to services. In particular:

- The problem of defining children as a homogenous group. This does not reflect the reality of the experience and needs of child victims. The drivers, patterns and impacts of abuse in children are different depending on whether they are boys or girls, other factors and the services they require are therefore different and should be tailored accordingly.
- The availability of advocate roles for children is patchy and inconsistent, as discussed earlier in this chapter. These roles should be evaluated and, where shown to be effective, should be rolled out consistently in order to ensure that all child victims are able to access appropriate advocate roles.
- The Domestic Abuse Act 2020 recognises children experiencing domestic abuse are victims in their own right, but there is confusion from some service providers of what this actually means. It is vital that this is clarified and that any duties under this law are compatible with the DA Act. Government must consult with both children's charities and specialist domestic abuse charities when designing commissioning duties around services, include IDVA services, for children experiencing domestic abuse.

Please refer to our response in chapter three for further consideration and discussion.

Question 49: Have we correctly identified the range and extent of the equalities impacts under this consultation in the equality statement? Please give reasons and supply evidence of further equalities impacts that are not covered as appropriate.

We note that this question references the 'equalities statement', however this does not appear to form part of the consultation document itself, nor is it published separately. As such, we cannot comment on the statement, but we do have the following observations about equalities.

As outlined in various ways in our response (see below) we have highlighted that there are existing inequalities in the criminal justice system, including discrepancies in the numbers of certain categories of victim offended against and in contrast to those who actually engage with the system. There will, we assert, be discrepancies in charging rates and rates at which Code rights are met in some crime types along demographic/ equalities lines but this is currently largely 'unmeasured'.

We have raised concerns about the inaccessibility of the consultation in general and specifically for certain groups of victims. Indeed, we wrote requesting that deaf and disabled victims be provided with accessible versions of the consultation, which were eventually made available nearly 6 weeks after the consultation opened (see letter of 16 December). We have also written asking for an extension in time for those groups to respond and await a response, although early indications are that organisations can request a 2-week extension which will be considered on a case by case basis (see letter of 24 January and response of 26 January). This risks a dearth of engagement from exactly the least heard and most marginalised groups of victims. This is problematic when you consider the Public Sector Equality Duty (PSED) and broader equalities issues around the legislation, as these are exactly the groups that may be in the best position to point out any unintended equalities issues with the legislation.

Although we see that you assert 'Our proposals are designed to make it easier for all victims to report crimes, access support and engage with the criminal justice process' we would be keen to understand how you plan to mitigate existing inequalities because without doing so you risk further entrenching them. For example, specialist 'by and for' services often live in a near permanent state of existential crisis of funding. This could be mitigated by a national framework for commissioning and ring-fenced centralised funding for the 'by and for' sector. Without including specific provisions for minority groups, minority groups will still be comparatively disadvantaged relative to the majority.

Equalities impacts and considerations are fundamental to this consultation and we have made reference to these considerations throughout our consultation response. Below follow a sample of some of the key observations and recommendations in our consultation response.

- We recognise that this is a consultation that is largely concerned with the treatment of victims whilst they engage in the criminal justice system (CJS). This is crucial and much-needed work. However, it is important to note that the vast majority of victims of crime, particularly of high-harm crimes, do not engage with the CJS. Chapter Three considers in-depth the well-being of the widest proportion of victims, including the commissioning of the 'by and for' sector.
- We specifically note that black and minoritised women and disabled women, including learning disabled women, appear to be the least likely victim cohorts to engage with the CJS. We are also concerned about whether older or younger people and people of particular faiths are over-represented in victimisation and under-represented in engagement with the criminal justice system. In Chapter 1 we, therefore, request that the

Ministry of Justice commission research to explore the detailed characteristics of who does and who does not engage with the CJS, why this is the case and how the CJS could be improved to remove barriers and meet the needs for all victims.

- We set out in the appended table the relevant metrics we believe are required to effectively measure Code compliance. This includes data that tells us who the victims are. This is so that we can, for example, ensure that different groups are getting equal access to services, and also so that we simply know the core demographics of the victim population, in a similar way to knowing the demographic composition of the offender population.
- In Chapter 1, we argue that the Ministry of Justice should issue easy-read, BSL and other accessible versions and foreign-language editions of the Victims' Code. Compulsory training on Code rights and compulsory collection of data on Code performance, particularly in order to guarantee the Public Sector Equality duty, should also be a condition put onto all victims' services contracts, whether they are commissioned locally or nationally.
- In Chapter Three, we strongly recommend that any duties are co-designed with the relevant specialist sector(s) especially those involved in providing 'by and for' services. We strongly recommend that the difficulties faced by specialist 'by and for' organisations are mitigated in the design of any duties. We strongly recommend that government provides long-term sustainable funding for services, including 'back-room' costs and ring-fenced funding for specialist 'by and for' services. We strongly recommend that government co-designs with specialist 'by and for' organisations a national framework for commissioning.
- In Chapter Three, we call for the consideration of the needs of men and boys who experience interpersonal crime, and we recommend a central government strategy that would set a clear expectation.
- In Chapter Three, we strongly recommend that there is an amendment to Section 5 of the Police Reform and Social Responsibility Act 2011 to require Police and Crime Commissioners to provide a plan for victim services as part of their five-year policing plan and this should include a requirement to set out within that plan how they intend to meet their Public Service Equality Duty.
- In Chapter Three, we consider 'invisible' victims. These are groups of victims who are less 'seen'; these include disabled victims (especially learning -disabled victims), migrant victims, adult victims of child sexual abuse, older victims, and incidental or collateral victims who are not recognised as such in their own right, such as the parents or siblings of children who have experienced child sexual abuse. It is important that these victims are made more visible and are able to access support.
- In Chapter Three, we strongly recommend that any victims law contains a non-discrimination clause to ensure that victims who have insecure immigration status are treated as victims of crime not as 'suspect' immigrants.
- In Chapter Four, we consider the definitions of IDVAs and how these must include flexibility to ensure that the roles provided by 'by and for' specialist services are encapsulated within the definition and not excluded. By and for' services provide highly tailored services for groups of victims with protected characteristics. This includes LGBT+, Deaf, disabled and black and minoritised victims and survivors of domestic abuse as well as migrant women.
- We strongly recommend that government co-designs with specialist 'by and for' organisations a national framework for commissioning.